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Subject (up to 140 characters):

FCN TREATY - U.S. and JAPAN
(FAIM Documents)

AIR POUCH

PRIORITY

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611.944/12-1152

FOREIGN SERVICE DESPATCH

FROM: AMEMBASSY, TOKYO

1106

DESP. NO.

TO: THE DEPARTMENT OF STATE, WASHINGTON.

December 11, 1952

REF:

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SUBJECT: FCN Discussions

Enclosed is a copy of a press release of the Ministry of Foreign Affairs which was carried in the English-language Nippon Times on December 6 in connection with the draft United States-Japan FCN Treaty. The release, which was given fairly wide coverage by Tokyo newspapers, states that the FCN Treaty is "expected to take shape soon if Japan finds no particular objection to the views set forth by the U.S. authorities on points at issue". Mention is made of a meeting between Mr. Takio ODA, Director of the Economic Affairs Bureau of the Ministry, and the Economic Counselor. At this meeting, which was held on December 4, the latter relayed to Mr. Oda the various suggestions and acceptances of Japanese proposals contained in the Department's more recent telegrams on the subject. Mr. Oda expressed his gratitude for the sympathetic consideration given the problems raised by the Japanese representatives and indicated his belief that most of the points at issue had been resolved.

According to the enclosed press report, three questions remain pending in the negotiation of the Treaty. The first and third of those listed in the report have not been raised by Mr. Oda or his assistants, and it would appear that they are already covered by the pertinent provisions of the Treaty. The second point, however, is of significance and has been the subject of lengthy discussions with the Japanese representatives. As the Department is aware, the Embassy informed Mr. Oda and his associates that national and most-favored-nation treatment is to be accorded after the initial screening of investment. Mr. Oda has also been informed that the United States regards its acceptance of the Japanese desire to screen investments as a major concession in the interests of formulating a workable and mutually beneficial treaty. He is aware, however, of our firm position that investment should not be restricted or discriminated against after it has been permitted entry under such a screening procedure.

The Ministry of Foreign Affairs has pointed out, however, that the current Foreign Investment Law provides for control over foreign capital even after its introduction (e.g., discriminatory restrictions on the acquisition of outstanding stocks sold on the Japanese market). The Embassy, in turn, has indicated the undesirability of such discriminatory measures which would tend to discourage the foreign investment which Japan itself declares it sorely needs. It has been suggested to Mr. Oda that he give careful consideration to the earliest amendment of the Foreign Investment Law to remove such artificial and unnecessary barriers to local investment as now exist.

The Embassy believes that it would be most desirable that such legislation be amended forthwith, prior to the submission of the FCN Treaty to the Diet for notification.

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This would then constitute a corrective step taken independently by the Japanese Government and would not be subject to Diet criticism of unwarranted intervention in domestic matters by the United States, an accusation almost certain to be made if the Law were later amended to conform with the provisions of the Treaty. The Economic Counselor and the Financial Attache intend to press at every opportunity for the earliest amendment of the Foreign Investment Law and will review the entire problem on December 11 with Mr. Oda, Mr. Gengo SUZUKI of the Ministry of Finance (recently returned from the United States), Mr. Nobuhiko USHIBA, Chief of the International Trade Bureau, MITI, and other Government officials.

It will be noted that the enclosed press report states that the Ministry of Foreign Affairs believes that formal negotiations on the treaty will be held in Tokyo "by the end of the year at the earliest". Previous releases issued by the Ministry had been to the effect that negotiations would take place in December and that the Treaty would be signed late in December or early in January. The Ministry is planning an ambitious program of FCN Treaty negotiations with numerous Governments, including most of the countries in Europe, South America and Southeast Asia. There is also a plan to renegotiate the prewar treaties recently revived with Denmark, Sweden, Switzerland, Finland, France (only some provisions revived temporarily), Germany, Thailand, and others. Some of these negotiations are scheduled for the very near future, particularly those with Canada, Italy, Spain, and Mexico, and it is the hope of the Ministry that the Treaty with the United States can be ratified by the Diet as soon as possible in order that it may serve as a model in the future.

Mr. Oda has confirmed these statements and expressed the hope that formal negotiations may be held and the Treaty concluded not later than January. The Embassy considers it most fortunate that Mr. Oda headed the Japanese side during the final round of informal discussions. Unlike most Japanese officials, he is able to appreciate the reasonableness of a statement by the Embassy without attempting to confuse the issue with the interminable arguments which characterized earlier discussions on the FCN Treaty. Mr. Oda is not afraid to make decisions and it is believed that he has ably presented the U.S. views to other agencies of the Japanese Government. He has already assured the withdrawal of many of the objectionable proposals advanced by the Ministry of Finance and other agencies.

Unfortunately, Mr. Oda is departing early in January to attend the conference of Japanese diplomatic and consular officers in South and Southeast Asia scheduled to open in New Delhi on January 5. After attending this conference Mr. Oda plans to visit Paris, presumably in connection with GATT and COCOM matters, and therefore may not return to Tokyo until February. He informed the Economic Counselor that his chief assistant, Mr. Kenichi OTABE (who has just attended the regional Japanese diplomatic conference in Washington), will replace him as head of the Ministry's FCN Treaty negotiators during his absence.

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For the Ambassador:

Frank A. Waring
Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosure: *BA*

Copy of Press Report, "Draft Shaping Up
of Pact With U.S.", Nippon Times,
December 6, 1952..(UNCLASSIFIED).

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Draft Shaping Up of Pact With U.S.

Nippon Times, December 6, 1952

The draft of the projected Japan-U.S. treaty of commerce and navigation is expected to take shape soon if Japan finds no particular objection to the views set forth by the U.S. authorities on points at issue, Government sources told Kyodo.

This point emerged after a meeting between Takio Oda, chief of the Foreign Office Economic Affairs Bureau, and Frank Waring, chief of the American Embassy's Economic Affairs Division.

Preliminary negotiations on the treaty draft were brought to an end in mid-October.

The source revealed that the draft treaty consists of 27 to 28 articles, and the treaty would remain in force 10 years. The treaty would include up-to-date regulations to meet the latest international situation. It even stipulated, they disclosed, the clauses already formulated in the Japan-U.S. treaty of commerce and navigation of 1911, which concerned, 1) freedom of entry, sojourn and residence, 2) protection of persons and property, 3) entrepreneurial activity, 4) customs and domestic taxes and 5) regulations concerning trade and shipping.

Not only these stipulations but also such up-to-date clauses as protection and encouragement of investment, foreign exchange control and social security incorporated in other similar postwar treaties, are included in the Japan-U.S. draft, they added.

Items in the draft over which the parties concerned had shown the widest difference of views were entrepreneurial activity, protection of investment and foreign exchange control.

Following a series of concessions by both sides, the source said, the present pending issues are said to be the following:

1. How to determine the type of enterprises to which "national treatment" cannot be accorded.
2. What restrictions should be imposed on remittance of profits by citizens of the other contracting country, and whether room should be left in the draft for both sides to strengthen their own foreign exchange control in the future.
3. In case the "most-favored-nation" treatment is accorded each other, can the United States apply the GATT tariff to Japan which is yet to be admitted to the General Agreement on Tariffs and Trade.

On these questions, they revealed, the Foreign Office is sounding out the Finance Ministry, MITI and the Justice Ministry and their conclusions are expected about the middle of the month. They surmised that formal negotiation would be conducted between Foreign Minister Katsuo Okazaki and American Ambassador Robert Murphy here by the end of the year at the earliest.

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FOREIGN SERVICE DESPATCH

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FROM : ANEMBASSY, TOKYO DEPARTMENT OF STATE

Action Assigned to

TO : THE DEPARTMENT OF STATE, WASHINGTON.

DESP. NO. 1632
Action Taken February 17, 1953

REF : Embtels 2568, February 9, and 2664, February 16, 1953

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Direction to DC/R

SUBJECT: FCN Treaty

the proposed treaty is generally acceptable to Japan.

Four points, however, require further negotiation. These involve the various issues which continue to be the subject of newspaper articles and editorials, although the latter are reportedly the result of mere speculation.

1. In connection with Article VII, paragraph 1, and Article IX, paragraph 2, the inclusion of a provision in the Protocol (or an exchange of notes) which will permit the retention of the current Foreign Investment Law for a period of three years, thus, in effect, continuing the prohibition on alien purchases of outstanding shares on the stock market;

2. The safeguards contained in paragraph 2, Article VII, concerning retroactive application of new limitations are acceptable, provided Japan is permitted to apply such limitations retroactively to the residents of a particular state of the United States whenever the latter imposes or augments its restrictions (except for banking, the present status of which shall remain unaffected);

3. With reference to Article XII, concerning remittances in the currency of the other party, a provision in the Protocol which will permit Japan to limit such remittances to the currency of investment regardless of the nationality of the investor; and

4. In connection with Article XVIII, the present text which is unconditional with respect to alien participation in rights and

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1 Enclosure

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privileges granted to Government-owned enterprises which may be in competition with private business, would accord more than national treatment and is therefore unacceptable. [REDACTED] limit paragraph 2 of this Article to the national treatment concept.

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Retention of Foreign Investment Law on Temporary Basis

With reference to Articles VII and IX of the draft FCN Treaty, Japanese industrial and commercial associations, among them the powerful Federation of Economic Organizations (FEO) and the Japan Chamber of Commerce and Industry, have long opposed any modification of the Foreign Investment Law which would permit aliens to acquire outstanding shares on the stock market. They claim that these shares are currently undervalued, because the book value of corporate assets has not kept pace with currency depreciation and that the equity capital of Japan's leading enterprises represents only a small percentage of their total assets which are continuously expanding as a result of their present reliance on bank loans and other credit. The associations therefore argued that it would be possible for a foreigner with a relatively modest investment to acquire controlling interests in Japan's leading enterprises. They urged that the provisions of the Foreign Investment Law (which required specific approval by the Ministry of Finance for the purchase by aliens of outstanding shares, a condition tantamount to absolute prohibition in actual practice) be retained indefinitely, or, alternatively, that agreement be reached with the United States whereby these provisions would be continued for a period of five years. It is believed by Japanese businessmen that capital structure and share values will have attained normalcy within that period.

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The Embassy believes that the privilege of purchasing outstanding shares on the Japanese stock market is one in which few, if any, American investors would presently be interested. Continued speculation by the Japanese has driven stock values upward to such an extent that the return on such investment has recently fallen below that payable by banks on normal time deposits. The seemingly fantastic dividends declared by Japanese corporations are calculated on par values, and when re-calculated on the basis of current market values, are not as high as would first appear. In fact, recent dividends on investment at market values reveal that the return on Japanese shares is frequently lower than on stocks listed on the New York exchange. In view of these facts, as well as the strong opposition of Japanese business circles and Government agencies, the Embassy believes that acceptance of the Japanese position would expedite conclusion of the treaty without creating any serious deprivation. Since the principle of the treaty is assured, the temporary postponement of this specific privilege for a three-year period is regarded as a necessary, even though undesirable, step in reaching agreement with the Japanese Government. The Embassy strongly recommends that favorable consideration be given

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the Japanese proposal to insert a provision in the protocol along the lines suggested.

Retroactive Application of Treaty Limitations

[REDACTED] the second sentence, paragraph 2, Article VII, is generally acceptable, but it wishes to incorporate wording which would permit Japan to apply such limitations or restrictions retroactively to American-owned enterprises whenever the state of which these are legally resident takes action either to impose new restrictions or increase present restrictions aimed at Japanese activities or investment in that state. This reciprocal provision would, at first study, appear to be acceptable, since it had been previously understood that Japan might wish to limit or prohibit American participation in one of the reserved fields to the extent that the particular state of residence in the United States might so limit alien participation. It would also appear that the recent trend in state legislation has been to reduce, rather than to increase, such restrictions. B1 EA(3)

The principle of reciprocity is unsound; however, when analyzed from the point of view of the Japanese Government, [REDACTED] B1

[REDACTED] the proposed investment of an American firm could be duly "screened" with respect to one of the reserved fields. After consideration by the Japanese Government of the desirability of the investment and its importance to the economy the firm could then be authorized to acquire, for example, a 49 percent interest in a Japanese enterprise. After the investment has been approved, Japanese officials might discover that the American's state of residence limits alien participation in the same, or a similar, field of activity to 25 percent. The American investor would then be required immediately to dispose of his interest in the Japanese concern in excess of 25 percent. His losses would naturally be considerable. EA(3)

[REDACTED] admitted to the reporting officer that he shared the Embassy's views and that it would be impossible to work out a suitable "reciprocity clause" [REDACTED] exception of banking activities, to which the right to impose retroactive limitations would not apply. Since it was solely in connection with banking activities that the Japanese first seemed concerned in discussions concerning retroactive limitations, the Embassy fails to understand why this particular question has assumed such importance. It is possible, however, that the Japanese are thinking of this matter in connection with the extension of most-favored-nation treatment, since it has been learned that a group of aliens, not Americans but not otherwise identified, has applied to the Government for permission to invest in a shipping line, and that approval might possibly be granted. B1 EA(3)

The Embassy therefore believes that this Japanese proposal has little actual merit and that it raises a number of serious problems which could create difficulties in the future. It is possible, however, that the Department may be able to suggest a compromise which would satisfy the Japanese desire for "reciprocity" while safeguarding the interests of American investors. The Embassy will appreciate any suggestions which the Department may wish to make in this connection.

Foreign Exchange Remittances

[REDACTED] accepted in principle the commitment to allocate foreign exchange B1 EA(3)

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for the remittance of profits in the currency of the other party. Japan's problems in connection with foreign exchange, particularly its anticipated shortage of dollar reserves and recent sharp fluctuations in the accumulation of sterling, have made Japanese officials extremely sensitive in exchange allocation matters.

[REDACTED] Japan should not be obliged under the treaty to allocate dollars for remittance by an American who may have invested only sterling in Japan. [REDACTED]

[REDACTED] therefore proposed that the words "as a general rule" be added to Article XII, paragraph 3, of the draft treaty.

[REDACTED] the Economic Counselor stated that such vague terminology could scarcely be included in the treaty, and he suggested that the Japanese give consideration to some more specific proposal, possibly a reservation in the Protocol. The Economic Counselor added that the allocation of sterling to an American desiring to remit profits to the United Kingdom from an investment originally made in dollars was, in his opinion, most difficult to justify. He stated that it was possible, however, that the first-mentioned of these cases, e.g., sterling remittance for sterling investment, might be acceptable to the Department, and suggested that the Japanese draft their proposal to cover only such a situation.

The Department will recall that this question has arisen before, and that the Embassy had previously advised the Ministry on an informal basis that the United States might not press in all cases for dollar remittance rights in connection with non-dollar investment. The Ministry was also advised, however, that old investments made before the inconvertibility of currencies, as well as those not clearly identifiable in recent years as non-dollar investment, would certainly be regarded as American investments requiring remittance and withdrawal rights in dollars. This concept then appeared to be acceptable to the Japanese representatives. The Embassy therefore believes that the present Japanese position can be met along the lines indicated, provided the Ministry's proposal is concise and specific, and does not raise further questions concerning the destination of remittances.

Government-owned Enterprises in Competition With Private Business

The last of the four points [REDACTED] concerns the present text of Article XVIII, and the statement therein that private enterprise shall be entitled to the benefit of any special advantages of an economic nature accorded to Government-owned concerns which are in competition with private enterprise. Since this is an unconditional right to be accorded private enterprise of alien ownership, [REDACTED] holds that it would place on the Government the obligation to accord privileges to aliens which are not normally extended to Japanese nationals. [REDACTED] that paragraph 2 of this Article should clearly embody the national treatment concept; alternatively, it suggested that the entire Article be deleted.

In view of the fact [REDACTED] declared during the various rounds of informal discussions that the United States was demanding for its citizens privileges which would never be extended to Japanese, it is obvious

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that the "national treatment concept" [redacted] is entirely meaningless. [redacted] one possible solution was the drafting of a provision in the Protocol which would guarantee that no Government-owned enterprise would sell its products or services at prices below the competitive level. Such a proposal poses grave problems since it is limited to only one aspect of possible Government competition, and would be difficult, if not impossible, to enforce or supervise.

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Although there are now no such Government-owned enterprises in competition with private industry or business, as the Department is aware from the Embassy's reports, it is interesting to note that this question has arisen during every round of informal discussions. [redacted]

[redacted] know of no program calling for the creation of Government enterprises in competition with private business. The importance they attach to this question would indicate, however, that at least tentative planning is taking place in the field of Government-owned enterprise, although the Embassy is unable further to clarify this matter despite repeated attempts to glean more information on the subject.

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The present proposal on the part of the Japanese is believed by the Embassy to be impractical. In view of the great importance attached to this question, however, the Embassy suggests that the Department may be able to formulate some revision to Article XVIII which would help meet the Japanese position, at least in part, without undermining, as does the Japanese proposal, other safeguards for American investment presently contained in the treaty.

Further Meetings with the Japanese Representatives

The Ministry of Foreign Affairs is currently preparing a written statement of its position and will be ready to resume informal discussions with the Embassy about February 24. It is believed that these discussions will be fairly brief, and that agreement may be reached on at least two of the above-mentioned points (1 and 3). The Embassy has already (Embtel 2664, February 16) reported to the Department in this connection, and has requested the Department for its telegraphic instructions in the hope of receiving these during the early part of the forthcoming discussions. The Embassy hopes that these meetings will be limited to the four points discussed above, and understands from the Ministry that all other pending issues have been accepted by the Cabinet. [redacted]

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[redacted] Since one or more of the four points presently in question may remain pending after the coming discussions, it is believed that the Ministry may soon request the initiation of formal negotiations. In order that the Ambassador may be ready to open negotiations without undue delay after he is approached by the Minister of Foreign Affairs, the Department has also been requested to transmit at its earliest possible convenience the appropriate powers authorizing the Ambassador to enter into formal negotiations with Japan.

There are enclosed extract translations of various newspaper reports and editorials which the Embassy believes will be of interest to the Department. These reflect the current opinions of the leading Japanese business and industrial [redacted]

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From Tokyo

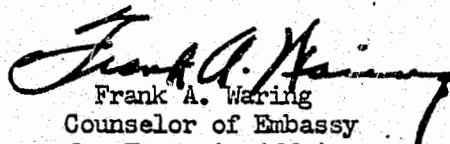
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organizations concerning the treaty, and indicate generally the attitude of Japanese Government agencies regarding these controversial points. It is interesting to note that the slogan "open door" has been revived to explain the problem of unrestricted investment of yen by foreigners in Japan, and equally interesting that some newspapers believe an "open door" to be most undesirable for present-day Japan.

For the Ambassador:


Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosure: *AH*

✓ Summary Translations of Japanese Press Reports Concerning the Proposed United States-Japan Treaty of Friendship, Commerce and Navigation.

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Summary Translations of Japanese Press Reports
Concerning the Proposed United States-Japan Treaty
of Friendship, Commerce and Navigation

February, 6-13, 1953

Nihon Keizai, February 6

"The Federation of Economic Organizations attached importance to the issue of acquiring old shares in yen currency as it is a fundamental issue and therefore, expressed its explicit opposition through a written opinion, as follows:

"1. Under the existing regulations, purchase of old shares with reserved yen funds is permitted although purchase of new shares is prohibited, and remittance from Japan is not permitted in principle. The American side holds that even acquisition of old shares, except for limited types of industries under the proposed treaty, should be freely permitted under national treatment. The Americans contend that it is necessary for Japan to introduce foreign capital in order to reconstruct her economy, and desire that foreign capital introduced be accorded national treatment in principle, except for necessary restrictions reserved.

"2. In case, however, profits gained in yen currency from business activities are accorded national treatment as desired by the American side, it is feared under the present economic situation that the yen currency held by foreigners will positively flow into the stock market. Hence, circles concerned fear that an undesirable situation will be brought about in our country's economy due to the following adverse factors -- a) speculative fluctuations of stock prices by Americans, b) cornering of gilt-edged stocks by Americans of basic industries and important export industries; and c) dominant management of those industries by Americans.

"3. Therefore, it is necessary to reserve the present restrictions on the issue in the proposed treaty for the time being and have discussions between the two countries in the future when deemed necessary to remove the restrictions.

"The issue of acquisition of old shares by foreign nationals, about which the Federation of Economic Organization filed a written petition with government authorities concerned Thursday, will exercise considerable influence upon Japanese economy. Therefore, it constitutes one of the serious obstacles to the conclusion of a U.S.-Japan commerce and navigation treaty. The reason the Americans vigorously insist upon acquisition of old stocks is that induction of bad foreign capital can be checked by drastically restricting foreign capital at the 'door' and that it is not necessary to restrict even business activities after introduction since foreign capital, once introduced, will contribute to developing the Japanese economy."

Asahi, February 8 (Editorial)

".... Another knotty point in the preliminary negotiations is the degree to which the Government will authorize American individuals and corporations to participate in capital investment and management through the holding of shares in conducting business activities in this country. The American side requests that the Japanese Government permit Americans to freely subscribe to shares with the

funds they will earn in Japan. The Government, however, is determined not to accord national treatment to basic industries, such as public utilities, transportation, shipbuilding, air service, and mining, with an eye to preventing beforehand key industries from being dominated by foreign capital. But some other key industries, including iron and steel, are not contained in the list of basic industries of this type. Actually, there are signs that foreign capital is putting pressure on beverage enterprises, without limiting its key industries. In this connection, we should not ignore protecting smaller enterprises.

"We would like to ask the United States for particular reconsideration, as it is utterly to disregard the actual conditions of Japan for the U.S. Government to gauge the Japanese economy on the same basis as the American economy; such an attitude will not convince us Japanese in any way."

Jiji, February 9 (Editorial)

"It is said that negotiations for a Japan-U.S. treaty of commerce and navigation have almost been concluded, with only two or three points yet to be settled. One of them is the question of purchase of shares of Japanese companies by American businessmen in Japan. Commerce and navigation treaties America concluded in recent years with Italy, Columbia, and other countries provide for not only most-favored-nation treatment but also treatment equal to that accorded to natives. This new tendency is due to the fact that necessity of lively activities in international economy was recognized.

"Some Government and business circles entertain fears that if foreign businessmen are allowed to purchase shares of Japanese companies with yen currency accumulated as a result of introduction of foreign capital, domestic industries might eventually come under their control. But there are definite signs that such a situation will arise. There is no reason to restrict expenditure and remittance of accumulated profit of foreign businessmen in principle.

".....Considered in this light, it is not hard to reach agreement on these moot points, and unreasonable fears about international competition must be rejected. However, there are differences between Japan and America with regard to cartels and public enterprises. On this, American good understanding must be sought. In negotiating with America, the Government must not be seized with conservative fears. It must assume rational and open-hearted attitude like America. A Japan-U.S. treaty should be concluded on the basis of broad judgment after requesting good understanding of America."

Tokyo Shimbun, February 9 (Editorial)

".....It is a special feature of this treaty that both countries mutually accord 'national treatment' in line with treaties of amity and commerce concluded after the war between America and Columbia, Italy and Israel. Needless to say, if this treaty is concluded, it will promote friendly relations between the two countries. The proposed treaty provides for wide national treatment and the most-favored-nation treatment in order to expedite commerce between Japan and America. For instance, the proposed treaty stipulates mutual recognition of the right to own immovables since Japanese people became able to own immovable in America as a result of the

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passage of the Walter-McCarran bill at Congress at the end of last year. In this respect, it is an equal treaty.

"However, the Government intends to put some restrictions on acquisition of rights by Americans on public utilities such as communications, water-works, transportation, power, shipbuilding, aviation and development enterprises. We also consider it is necessary to put minimum restrictions on their rights because it will not be difficult for them to exert influence on management of enterprises and control the stock market as Japan is in a very weak economic position, the value of its currency is low and its capital is too small.

"It is very desirable that Japan-U.S. relations will be brought closer through commerce, and Japan must welcome induction of foreign capital. But it is very important for Japan to protect and foster her industries as even America cannot ignore protection of her own industries. We hope that America will fully understand these circumstances."

Asahi, February 10

".....One point of special concern to business circles on the contents of the treaty draft is the acquisition of old shares by foreign nationals, a pending issue throughout previous negotiations. Business circles are opposed to the proposal of according national treatment to Americans in this regard, because they assert Americans, if granted a free hand to acquire old shares, are likely to threaten the right of management through their cornering of shares on the stock market.

"Under such circumstances, Chairman Tanaka of the Special Committee for the U.S.-Japan Commerce and Navigation Treaty of the Federation of Economic Organizations advanced his opinion: 'We ask the Government to stand pat as to this point to the last end. Many leaders in business circles, including chief Kuwahara of the Business Division of the Bank of Tokyo, holds: 'It is not so bad, excepting the pending issues'."

"On the other hand, some industrial circles, including president Hara of the Japan Chemical Drug Co., fear that the proposed treaty may have an adverse effect upon our country for the following reasons:

"1. It is open to question that introduction of foreign capital in this country can be restricted only when it is necessary to protect specie reserves. It so, there will be no reason for refusing the induction of foreign capital which is made on condition that remittance will not be sought unless Japan maintains a favorable balance of international accounts. As a result, shares of Japanese enterprises competing with American concerns will be monopolized by the latter, and it will be possible for the latter to employ such means as to put American products on Japanese markets which keeping Japanese enterprises idle. Therefore, it is necessary to specify in a protocol, if impossible in the treaty the degree to which foreign participation will be authorized and the kinds of industries eligible for the privilege.

"2. The kinds of industries in which the Japanese Government is empowered to control business activities of foreign nationals should be increased in number.

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To say the least, all the key industries, which the Government has given subsidies and fostered, should be included. Thus, the Government should do everything possible so that absolutely all those industries will not fall under the control of foreign businessmen.

"3. It is dangerous to be bound for ten years under the same regulations on these issues and foreign exchange control with the conclusion of a new commerce and navigation treaty. Since we are unable to predict what change the present economic situation will undergo a few years later, it should be ruled in a protocol that the treaty can be altered when so desired by either of the two parties after two or three years."

Jiji, (Editorial) February 11

"Unnecessary inferiority complex and servile spirit like the unreasonable sense of superiority toward backward senior nations, s, are a sort of racial mentality. It seems every nation is not free from them. For Japan, for instance, America is an advanced country and India and other Southeast Asian countries are less-advanced nations. In Japan, several months ago, the Finance Minister and other opposed induction of foreign capital by an aluminum company. Recently arguments over the necessity of restricting purchase of shares of Japanese companies by foreign capitalists have become clamorous. This is hindering the negotiations for a Japan-U.S. commerce and navigation treaty.

"It is probably unreasonable to dismiss these instances as manifestations of inferiority complex and servile spirit. But we cannot find a definite reason that it is inconvenient to have some Japanese enterprises taken over by foreigners. In the early years of the Meiji era, when foreigners were allowed to live freely within the country, people feared that the whole of Japan would be occupied by foreigners. This is a worthy reminder for us contemporary Japanese. At the same time it is necessary for us to be mindful of such a racial mentality when we negotiate with less-advanced nations."

Sangyo Keizai (Editorial) February 12.

"There is a wide variety of controversial points and it is not easy to iron out the differences. Under these highly unsoluble differences, we perceive a clash of ideas on the adjustment of which the final solution depends: the U.S. idea is an 'open door' policy in commerce and Japan's idea is to get her economy to stand on its own, hence industrial protectionism.

"Free economic activities without any economic barricade by means of a reciprocal treaty is an ideal. So the American idea of 'open door' policy has nothing objectionable in principle. The more so, since the U.S.-Japan treaty of commerce and navigation will set a precedent for forthcoming treaties of this kind with other nations and 'open door' economic activities with these nations is what Japan is looking forward to.

"But there is one point which Japan must reconsider. Japan's economic dependence must not be harmed because of the universal principle of 'open door'. Japan's industry and economy which will otherwise develop should not be adversely

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affected by a treaty of 'universal truth'. Japan also must be careful not to create an impression that she subordinate to another country economically. If Japan is conscious of her economic independence, it will give her courage to defend herself in the military phase. Economic independence of Japan will enable her to rebuke propaganda of other countries. It will further create a favorable atmosphere for Japan's economic coordination with the nations of Southeast Asia. The final conclusion is this: reciprocity in the treaty must be preserved and the treaty must not result in damaging Japan's economic independence. We think that, in negotiating the treaty, friendly and political consideration must be paid in the light of current international circumstances."

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AIR POUCH

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(Security Classification)

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611.944/4-1453

FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, TOKYO

2117

DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

April 14, 1953

DATE

REF : Embtel 3263, April 10, 1953

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SUBJECT: FCN Treaty and Treaty Trader Status

Enclosed are copies of two letters addressed to the Economic Counselor by Mr. Takio Oda, Director of the Economic Affairs Bureau, Ministry of Foreign Affairs, and chief Japanese representative in the recent negotiations on the FCN Treaty.

Mr. Oda's letter of April 3, 1953 (Enclosure 1) outlines the type of arrangement which the Ministry of Foreign Affairs hopes may be given favorable consideration by the Department. In handing this letter to the Economic Counselor, Mr. Oda commented that he was prompted to make this request concerning interim measures for the entry into the United States of Japanese treaty trader applicants as a result of reports from the Japanese Embassy in Washington regarding discussions on this subject with officers of the Department. The Japanese Embassy reportedly advised the Ministry of Foreign Affairs that the possibility of establishing a "modus vivendi" had been discussed with officers of the Department, who had indicated that sympathetic consideration would be given this matter.

The Economic Counselor informed Mr. Oda that, although the Department and the Embassy fully appreciated the difficulties encountered by treaty trader applicants at this time, it was problematical whether any such interim arrangement as that suggested by the Ministry is possible under the provisions of the immigration laws of the United States. The Department's OMV dated April 6, 1953, entitled "Assimilated Treaty Trader Status for Japanese Businessmen", had not then been received, but the information contained therein will be transmitted verbally and informally to Mr. Oda within the next few days.

Although the FCN Treaty has been criticized on economic grounds by some

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newspapers (e.g., concerning the alleged disadvantages of a "treaty drawn on equal and reciprocal lines" owing to the economic inequality of the two signatories, et cetera), most of the attacks have been political and come from opposition parties, particularly the Socialist groups. The Yoshida Government and the Liberal Party are said to have exceeded their authority in having concluded the Treaty following the dissolution of the Diet. The Cabinet is reported to have realized that such criticism was likely to come from the opposition parties during the current electoral campaign, but the decision was reached to conclude the Treaty at the earliest possible moment, perhaps with a view to capitalizing in the campaign on this achievement of the Liberal Party.

Prime Minister Yoshida recently instructed the Ministry of Foreign Affairs to prepare a report listing the immediate advantages accruing to Japan as a result of the signature of the Treaty. Officials of the Ministry state that such a report has already been delivered to the Prime Minister, and that it may be used by him in countering opposition attacks during the campaign. Actually, it is believed that such a report or position paper may be more useful to the Ministry itself during interpellations on the Treaty at the forthcoming session of the Diet. Officials of the Ministry informed the Economic Counselor that it was difficult for them to identify the advantages arising from the signature of the Treaty in April rather than some months later under the next administration, but that a number of reasons in support of the April signing, including the "resolution of the treaty trader problem", had been submitted to the Prime Minister.

The Embassy fully realizes that the approach made by the Ministry of Foreign Affairs is unrealistic in the light of United States immigration laws.

The enclosed letter and the report allegedly prepared for the Prime Minister are, however, of interest inasmuch as they are indicative of the Ministry's concern regarding the treaty trader problem.

For the Ambassador:

Peyton Kerr
Peyton Kerr
First Secretary of Embassy

Enclosures:

1. Copy of letter from Mr. Takio Oda, dated April 3, 1953.
2. Copy of letter from Mr. Takio Oda, dated April 7, 1953

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THE GAIMUSHO

April 3, 1953.

Dr. Frank A. Waring
Counselor
American Embassy
Tokyo.

Dear Dr. Waring,

You will have been informed that since the Walter-McCarran Act came into force on December 24, 1952, it has become more difficult than before for the personnel of Japanese firms to enter the United States for purposes of engaging in trade, shipping and other related commercial activities, and that accordingly, many Japanese trading firms in the United States are now experiencing much difficulty in conducting their business smoothly. For example, an employee of the Sumitomo Bank has been unable to obtain an entrance visa for three months. It is therefore earnestly requested that some kind of expedient steps on the following matters be taken by the Government of the United States even before the coming into force of the Treaty of Friendship, Commerce and Navigation between Japan and the United States:

1. Temporary measures concerning the entrance visas for those who would come under the category of treaty merchants or treaty investors within the meaning of the Treaty of Friendship, Commerce and Navigation, including their spouses and children if accompanying or following to join them.
2. Temporary measures for (a) the extension of the period of sojourn, and (b) temporary exit from the United States during sojourn and re-entrance thereafter.

It is further requested that as to those who have obtained visas as temporary visitors under this interim arrangement steps be taken by the Government of the United States to change their status as expediently as possible to that of treaty merchants when the Treaty of Friendship, Commerce and Navigation comes into effect.

Sincerely yours,

Takio Oda, Director
Economic Affairs Bureau
Foreign Office.

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Page 1 of
Encl. No. 2
Desp. No. 2117
From Tokyo

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Department of State

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FROM Tokyo

TO: Secretary of State

NO: 438, August 16, 6 p.m.

Re Embassy telegram 260, July 27, and Department telegram 254, July 27.

1. Foreign Office prepared accept reservation transmitted Embassy note July 27 but proposes simultaneous exchange two sets of notes whereby each government accepts reservation of other.

2. Commentary on verbatim text Embassy telegram 439:

A. US note to Foreign Office.

(1) In first paragraph Foreign Office wishes delete "you" after "honor to inform" and substitute "Your Excellency."

(2) In last paragraph Foreign Office wishes: Insert in first sentence "Excellency's" between "your government"; insert in second sentence "by Your Excellency" after "if this note" delete "by direction and;" and change "your government" to read "Government of Japan." Recommend approval Japanese revisions.

B. Foreign Office note accepting US reservation. Recommend approval.

C. Foreign Office note proposed Japanese reservation:

(1) Japanese reservation gives Japan right impose restrictions on practice of professions to same extent as states to which US nationals "belong" impose restrictions on Japanese re professional Original Japanese draft sought impose restrictions to extent imposed by state of US nationals domicile, whereas Embassy proposed Japanese reservation be limited to extent imposed by state where US national "admitted or licensed to practice." It was recognized that "domicile" formula more restrictive than "license" formula since under latter US professionals could be licensed in one or more states although domiciled in but one.

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August 17, 1953
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-2- 438, August 16, 6 p.m., from Tokyo

Also recognized that should US professionals seek divest themselves US domiciles further complications might arise. As most satisfactory solution most readily acceptable to Diet, "belong" test was devised. Since "belong" is vague and general term, Foreign Office will submit with proposed exchange of notes side letter interpreting "belong" to mean "a state where US nationals are admitted or licensed to practice, or if such nationals are not (repeat not) admitted or licensed to practice in any state, then where such nationals are domiciled." Embassy favors this solution and recommends acceptance.

(2) Foreign Office also raised question of whether US reservation applicable US Territories (Hawaii and Alaska), possessions and District of Columbia. If so Japanese reservation would be amended accordingly. Embassy's reply, subject to Department's approval, was that reservation not (repeat not) applicable such areas under federal jurisdiction, since Senate reservation applicable only to states. Thus professions clause would supersede any territorial restriction limiting professions to citizens, and if US nationals, regardless of domicile, can secure professional license in Alaska, Hawaii or District of Columbia, they would be eligible practice in Japan regardless of alienage. Request confirmation this point.

D. US acceptance Japanese reservation. Recommend approval.

3. Foregoing arrangement subject formal Cabinet approval which Foreign Office will seek after Department indicates its approval.

ALLISON

SW:KC/16

DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <u>W. J. Hall</u>	DATE <u>7-31-82</u>
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DEPARTMENT OF STATE

Memorandum of Conversation

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Japan file
318
DATE:

October 6, 1954

SUBJECT:

Proposed Investment of Singer Company in Japan.

LRR

PARTICIPANTS: Donald P. Kircher, Singer Manufacturing Company
Alvin L. Marshall, Vice President Singer Sewing Machine Co.
Elmer Walby, Tokyo Attorney for Singer

COPIES TO:

Mr. Noel Baumgardner - HA
Mr. Eralin Robinson - CVD
Mr. Arnold Fraleigh - HA

American Embassy, Tokyo (cc)
Department of Commerce - Miss [unclear] (cc)
FE (cc)
CP - Mr. Walker (cc)
HA (3 cc)
OLI (2) - 1 MD - 1

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REVIEWED BY [signature] DATE 9-30-52
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The Singer representatives requested the meeting. Mr. Kircher reported that they and Mr. Elah, attorney for the Japanese companies involved in the investment proposal, had met with Mr. Gengo Suzuki, Japanese Commissioner of Finance in New York. He had told them the Japanese Government would not give Singer a guarantee of convertibility and did not consider its refusal to give a guarantee as a violation of its obligations under the FCN treaty. Mr. Suzuki explained the reasons for his government's position in much the same way he had done in his meeting with Departmental representatives on September 30. (See Memo of Conversation of that date.) Mr. Kircher said he had told Suzuki his company would not invest in Japan if the Japanese were unwilling to give any assurance of convertibility of income. Mr. Suzuki stated that final action would not be taken on the Singer case until the possibility of a conditional guarantee of convertibility had been explored further.

Mr. Kircher reported Mr. Suzuki said it would not be possible for the Japanese Government to give a conditional guarantee without first amending the Japanese Foreign Investment Law. Mr. Kircher thought the Japanese might back down on this point, however. Mr. Walby said he believed the Japanese law was broad enough to permit conditional guarantees. He mentioned cases in which the Japanese had guaranteed repatriation of capital but not repatriation of dividends, although this sort of limitation on a guarantee was recognized as different from a condition that convertibility be permitted only in relation to actual foreign exchange earnings from the investment. It was thought, however, that if Singer inserted the terms of a conditional guarantee in its application for approval, the Japanese might be able to approve the application.

DEPARTMENT OF STATE A/CDC/MR
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a conditional guarantee, under the present foreign investment law.

On occasion of revision of the Japanese foreign investment law, Mr. [redacted] stated that Mr. Suzuki believed this should be a subject of joint discussion between the Japanese Government and the American Embassy in Tokyo. Mr. [redacted] said he had told Mr. Suzuki that revision of the Japanese law was a matter for the Japanese Government to undertake although the Japanese were prepared to discuss possible amendments with American businessmen.

While formula for determining foreign exchange earnings of the Singer might be included in a conditional guarantee, Mr. Kircher reported no discussion in the meeting with Suzuki. It was recognized that [redacted] appeared to be thinking of a formula which would not permit an investor to receive the full amount of export sales as foreign exchange earnings from the fact that they apparently wanted to exclude that portion of export sales which was considered to have been a contribution of Japanese labor and materials to the foreign capital. Everyone agreed that while such an approach might be a simplification in theoretical economics, it would not be acceptable as a practical formula. Mr. Kircher maintained that the empirical test of earnings was to compare those above those which could be anticipated in the absence of the Singer connection. He pointed out that Pine's historical foreign exchange earnings did not necessarily continue in the absence of the Singer connection.

On the applicability of a conditional guarantee to the various forms of income from foreign investment, i.e. royalties, interest and dividends, Mr. Kircher stated that the conditional guarantee should apply only to royalty payments. The applicability of interest and dividend payments should be absolutely determined. Mr. Remondinger said he thought it would be appropriate to ask for a conditional guarantee of remittance of dollars to pay interest, but that the interest would be taken into account in computing the net foreign exchange earnings from investment for purposes of the conditional guarantee. Mr. Remondinger suggested that the Japanese might insist on applying the conditional guarantee to royalties and that it would be difficult to argue against them on this point.

[REDACTED SECTION]

It was suggested that the State Department would send an instruction to Tokyo Embassy to make the following representations to the Japanese: (1) the Japanese Foreign Investment Law is being administered in the spirit of the FGI treaty and (2) the Japanese should make efforts to simplify existing procedures or through amendment of their law to make foreign investment possible. Perhaps the Japanese would be willing to

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propose a conditional guarantee in a note replying to Mr. Allison's note of September 16. It was also agreed that Mr. Welty would consult with the Embassy on his return to Tokyo and then pursue with Japanese officials the possibility of a conditional guarantee.

Everyone expressed caution against expecting too much from this approach. The Singer representatives thought in any event the approach would be a good test of the sincerity of the Japanese. Mr. Hornsding said discussions in Tokyo might be hampered by the absence of a number of key Japanese officials who will be visiting in Washington. Mr. Kircher expressed the opinion that if the Japanese refused to make even a conditional guarantee, then the United States should make an even stronger protest than that made over their refusal to give an absolute guarantee.

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ACTION: Amembassy TOKYO

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In call on Ball October 10 Seki initiated discussion of possible GOJ proposal to ~~revise FOM Treaty~~ to permit control over US investment in Japan after GOJ completes liberalization of exchange controls. Seki emphasized no government decision reached on this question and GOJ wishes keep question as quiet as possible to avoid domestic political difficulties in both Japan and US. Seki said GOJ feels need to have means of protecting weak Japanese industries from more efficient industries brought in by US investors. GOJ hopes to do this without formal revision of Treaty and is now studying question.

Ball responded he could envisage considerable difficulty if GOJ proposed revision of treaty. Ball noted revision would have to go to Senate. Also he said USG has taken firm position in favor of free movement of capital and has recently resisted proposals to control capital exports as means of helping US dollar problem. In view of Japan's spectacular economic advance and high efficiency of Japanese industry Ball hoped Japan would pursue as liberal policy as possible.

Ball then raised subject of anticipated new round of tariff

Drafted by:

FE:EA:JAYar/1kb

10/11/62

Telegraphic transmission and
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Avery F. Peterson

Clearance:

S/S - Mr. Furnas

U- ~~Mux~~ Mr. Hartman

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reduction negotiations which USG wishes take place in early 1964. He explained that much of ground work for these negotiations should be completed before formal negotiations begin.

Seki responded that [REDACTED]

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Jap Govt, FCN+ AOC file 1953
DEPARTMENT OF STATE

AIRGRAM

A-537 CONFIDENTIAL

NO.

TO : Department of State

INFO : Amembassy Paris (FCN USRO)

FROM : Amembassy TOKYO

DATE: December 12, 1963

SUBJECT: Difficulties Encountered by American Firms With Japan's Restrictions on Foreign Investment.

REF: Embtel 1567, November 20, 1963; Embtel 1636, November 29, 1963; Embassy's A-591, December 2, 1963, Deptel 1439, December 5, 1963.

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SUMMARY

The information in this airgram on the Sterling Drug Company and the Hamilton Watch Company was given to the Embassy on a confidential basis with the express request in each case that no approach be made to the Japanese Government in the name of the firm.

American firms seeking to invest in Japan either in existing businesses or in new ventures continue to be handicapped by the restrictions imposed by the Japanese Government. Such restrictions seem to be erected chiefly by MITI and do not appear to have the support of the Ministry of Finance or the Ministry of Foreign Affairs.

[REDACTED]

Exempted from automatic decontrol
By Millard E. Gallop
Commercial Officer

CONFIDENTIAL

FORM 4-62 DS-323

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Drafted by: ECOM:AZGardiner/MLGallop/ag 12/6/63

Clearances: TREAS:RGPelikan (in draft) ECOM: KChristensen (in draft) COML:CGHastings

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JAN 9 1964
US-JAP

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JAPAN FCN

DATE: December 12, 1963

SUBJECT: Difficulties Encountered by American Firms With Japan's Restrictions on Foreign Investment.

REF: Embtel 1567, November 20, 1963; Embtel 1636, November 29, 1963; Embassy's A-591, December 2, 1963, Deptel 1439, December 5, 1963.

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Clearances: TREAS:RGPelikan (in draft) ECOM: KChristensen (in draft) COML:CGHastings

Although the imposition of restrictions on American firms seeking to invest in Japan on a validated basis has been the norm for many years, such restrictions have assumed a new significance with the elimination since July 1 of the option for foreign investors of unvalidated investment. The requirement that any acquisition of shares in a Japanese firm by a U. S. national, not an exchange resident of Japan, must be licensed by the Japanese Government, appears to the Embassy to constitute a denial to American investors of the national treatment to which they are entitled under Article VII of the FCN Treaty.

Since July 1, no branch office of a foreign company can receive funds in Japan from an exchange non-resident (including its head office) without first obtaining a license to receive the funds. The imposition of this control also appears a denial of national treatment.

The Department's views are requested as to whether the regulations and Cabinet orders restricting American investment in Japan constitute in themselves denial of national treatment to American firms. If the Department finds that such regulations are inconsistent with the FCN Treaty, authority is requested to make these views known to the Japanese Government.

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of A-537
Ambassy TOKYO

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Ambassy TOKYO

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Embassy Comment:

There is some evidence to suggest that [REDACTED] MITI officials would not be likely to receive support from either the Ministry of Finance or the Foreign Office in bringing such pressures on American or other foreign investors at a time when Japan is seeking capital from abroad.

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The Embassy has been informed that the Foreign Office and the Ministry of Finance favor making the conditions for investment more attractive to foreign investors than has been done in draft legislation being prepared by MITI.

If American firms suffering discriminatory treatment by the Japanese Government on investment applications or other business activities in Japan, were willing to allow the Embassy to use their names in protesting

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Page 5
of A-537
Ambassy TOKYO

to the Japanese Government, it is possible that further progress in securing national treatment for American firms could be achieved. However, with the exception of [REDACTED] no American firm has proved willing to prejudice its relationships with the powerful MITI bureaucrats by permitting the Embassy to quote "chapter and verse".

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Certain aspects of the GOJ's investment licensing regulations since July 1 appear to constitute in themselves denial to American firms of the national treatment to which American firms are entitled under the FCN Treaty. Thus the requirement by the GOJ (Cabinet Order No. 228 of June 29, 1963) that any acquisition of stock in a Japanese firm (whether in an existing business or in a new venture) by an exchange non-resident must first receive a license from the Government, appears to discriminate against American firms since Japanese nationals are not required to obtain a license to purchase shares in a Japanese company.* (Before July 1, exchange non-residents willing to forego assurance of the right of repatriating capital and earnings could acquire shares in a Japanese company without Government approval.)

It also appears that the requirement introduced July 1 (Ministry of Finance Notification No. 191) that each time a branch office of a foreign company is to receive funds from an exchange non-resident (including its head office) a license to receive the funds must first be obtained, is incompatible with the assurance given in Article VII of the FCN Treaty that "in all that relates to the conduct of the activities" of American owned businesses in Japan, they shall be accorded treatment no less favorable than that accorded Japanese enterprises. Branches of Japanese firms are not required to obtain a license to receive funds from their head office.

The restraints placed on American firms' investment in Japan, particularly the forced renegotiation of joint venture agreements, have little or no bearing on the protection of monetary reserves, the sole justification in the FCN Treaty permitting restrictions (other than formalities) on the introduction of foreign capital except in certain specified industries.

*Purchases of stock by an exchange non-resident in a going concern must receive the approval of the Bank of Japan. Such approval is automatic if the purchase does not result in more than 5 percent ownership by one foreigner, more than 10 percent total foreign ownership of a company in a restricted industry or more than 15 percent foreign ownership of a company in a non-restricted industry.

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As indicated in Deptel 1439, Embassy officers will be discussing the treatment of U. S. investment in Japan with their counterparts in the Japanese Government while hoping for a resolution of the problems at the joint cabinet level meeting. In its discussions, the Embassy would be guided by the talking papers and other briefing material received from Washington in connection with the scheduled November meeting as modified by the Department's response to this airmail. The Embassy would also touch upon the paradox of the GOJ's concern with the impediment of capital flow which the Japanese believe will follow imposition of the proposed Interest Equalization Tax and the GOJ's restraints on direct investment (which is not affected by the proposed U. S. legislation).

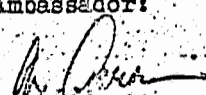
Action Requested.

1. The Department's views are solicited as to whether the requirement by the GOJ that any acquisition of shares in a Japanese firm by a U. S. national, not an exchange resident of Japan, without first obtaining a license from the Japanese Government, constitutes in itself a denial of national treatment to the U. S. investor and is therefore incompatible with Article VII of the FCN Treaty.

2. The Department's views are also requested as to the consistency with the Treaty of the requirement that a branch office of an American firm must obtain a license for the receipt of funds from its head office.

3. Authorization is requested for the Embassy to approach the GOJ to present U. S. Government views on the treatment of U. S. investment in Japan in relation to the rights of U. S. investors to national treatment under the FCN Treaty.

For the Ambassador:


Arthur Z. Gardiner
Minister for Economic Affairs

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN

Sanshin Building, Yuraku-cho, Chiyoda-ku
Tokyo

July 17, 1953

Office of the President

The Honorable Alexander Wiley
Chairman, Foreign Relations Committee
The United States Senate
Washington 25, D. C.

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My dear Senator:

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN, representing the American community here, naturally is very much interested in the Treaty of Friendship, Commerce and Navigation between the United States and Japan, now pending before your Committee. The Chamber especially is concerned over the reports that opposition has been voiced to the so-called professions clause of the Treaty (Article VIII), and that the proposal has been made that the Senate should give its advice and consent to the Treaty only upon condition of reservation or modification of that clause. We believe that those expressing such opposition have failed to take into account the important American interests involved in Japan, and we wish to call to the attention of your Committee certain facts and considerations which we feel to be of cardinal importance to it in deliberating upon this question. We cabled to you today the substance of our views on this matter, which is more fully set out herein.

It is unnecessary to dwell upon the importance of American private enterprise in foreign lands to the United States, for the national policy clearly encourages and promotes such enterprise. Accordingly, we have in Japan an American community -- leaving aside any question of the Security Forces -- consisting of some 9,000 American citizens; American investments in Japan today approximates \$450,000,000; and Japanese-American trade annually reaches the proportions of \$1,000,000,000. This American enterprise in Japan would be gravely handicapped -- it is, indeed, not too much to say that it could hardly continue to function -- if the American business community were deprived of access to the professional services of lawyers, doctors, architects and engineers, teachers, accountants and other technical personnel of all sorts; and not only the business community in Japan, but every American enterprise in America which invests capital, or otherwise deals with Japan, is likely at some time to require such professional services, or some of them. We may here include also the American Security Forces stationed in Japan, the services rendered to whom by the American professional men are by no means negligible; we may refer particularly to the services of American lawyers to personnel of the Security Forces in their private legal problems, which may well come to be of even greater moment in view of the current Japanese request for the right to exercise jurisdiction as in the case of the NATO countries over our servicemen.

To date we have had in Japan 55 American lawyers licensed by the Supreme Court of Japan to engage in practice for the benefit of American interests; there are 32 American doctors and dentists licensed by the Ministry of Welfare of Japan, and a considerable number of nurses; 10 architects and engineers;

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN
Sanshin Building, Yuraku-cho, Chiyoda-ku
Tokyo

July 17, 1953

Office of the President

The Honorable Alexander Wiley
Chairman, Foreign Relations Committee
The United States Senate
Washington 25, D. C.

My dear Senator:

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN, representing the American community here, naturally is very much interested in the Treaty of Friendship, Commerce and Navigation between the United States and Japan, now pending before your Committee. The Chamber especially is concerned over the reports that opposition has been voiced to the so-called professions clause of the Treaty (Article VIII), and that the proposal has been made that the Senate should give its advice and consent to the Treaty only upon condition of reservation or modification of that clause. We believe that those expressing such opposition have failed to take into account the important American interests involved in Japan, and we wish to call to the attention of your Committee certain facts and considerations which we feel to be of cardinal importance to it in deliberating upon this question. We cabled to you today the substance of our views on this matter, which is more fully set out herein.

It is unnecessary to dwell upon the importance of American private enterprise in foreign lands to the United States, for the national policy clearly encourages and promotes such enterprise. Accordingly, we have in Japan an American community -- leaving aside any question of the Security Forces -- consisting of some 9,000 American citizens; American investments in Japan today approximates \$450,000,000; and Japanese-American trade annually reaches the proportions of \$1,000,000,000. This American enterprise in Japan would be gravely handicapped -- it is, indeed, not too much to say that it could hardly continue to function -- if the American business community were deprived of access to the professional services of lawyers, doctors, architects and engineers, teachers, accountants and other technical personnel of all sorts; and not only the business community in Japan, but every American enterprise in America which invests capital, or otherwise deals with Japan, is likely at some time to require such professional services, or some of them. We may here include also the American Security Forces stationed in Japan, the services rendered to whom by the American professional men are by no means negligible; we may refer particularly to the services of American lawyers to personnel of the Security Forces in their private legal problems, which may well come to be of even greater moment in view of the current Japanese request for the right to exercise jurisdiction as in the case of the NATO countries over our servicemen.

To date we have had in Japan 55 American lawyers licensed by the Supreme Court of Japan to engage in practice for the benefit of American interests; are 32 American doctors and dentists licensed by the Ministry of Health, Japan, and a considerable number of nurses; 10 architects and

over 200 teachers; and some 400 technical personnel of other types. The services of these professional men, it must be emphasized, are vital to the preservation and functioning of American commercial, industrial and financial interests in Japan; if the American businessman of today cannot operate in the United States without the services of-- for example -- a lawyer or an accountant, it readily will be conceived how much greater is the need for the services of these professions when American enterprise is operating in a foreign country, subject to strange systems of law, accounting and taxation. That the services of these professions are essential to protection of the persons and liberties of American citizens in Japan, now and in the future, goes without saying.

These American professional men and women have been licensed by the Japanese Government, many of them long before the execution of the Treaty of Peace of San Francisco in recognition of the need of their services for the promotion of the mutual interests of the two countries. They have been licensed and permitted to practice their professions on generous terms without any requirements of reciprocity or of citizenship, simply upon compliance with the prescribed standards of good character and professional competence; and, as we have said, the present extent of American enterprise in Japan could not have been attained without their services. The pending treaty proposes only to recognize the right of citizens of either of the two countries to practice their professions in the other, with no bar on the ground of alienage. It is of course, not suggested that any such profession may be practiced in either country without compliance with the other standards prescribed by the nation -- which in the United States means by the States respectively -- for such practice; the American wishing to practice medicine in Japan must still demonstrate his qualifications by submitting to such examination as may be prescribed for the practice of medicine in general, the Japanese wishing to practice law in New York must still satisfy the requirements of New York as to residence, good moral character and satisfactory passing of the bar examination. The professions clause of the pending treaty, in short, merely provides that alienage in itself shall not constitute a bar to such practice, leaving otherwise unaltered the respective nations' full control and regulation of the professions.

It is our understanding that the objection to this clause is grounded on the fact that it would, if it became effective, supersede the very common existing State laws prescribing American citizenship as one of the qualifications for practice of the professions. That it would do so is of course clear, just as any treaty made under the authority of the United States does supersede State laws inconsistent with it. We are unable to believe that such a result threatens any American State with the flooding of its legal, medical, dental, engineering or other professional professions with Japanese practitioners; it may in fact confidently be asserted that the number of Japanese lawyers, doctors or accountants who could or would undertake to practice in the United States with the bar of alienage removed would be no greater than the number who have done so in the past -- which is infinitesimal, if not nil. Perhaps the best proof of this prophecy is the experience of the thirty years since, as we understand it, this standard professions clause first began to be incorporated in all of the United States' treaties of friendship, commerce and navigation; we have no knowledge of the materialization of any of the dangers apprehended by the opponents of this provision, and believe it quite safe to assert that no such result has ever come about. We wonder a little, too, it may be said, whether

the traditional American self-reliance and spirit of free enterprise have undergone an eclipse which leaves the American people fearful in the face of competition, even were it a real and not an imaginary competition.

We regard the question raised on the basis of the professions clause of this Treaty as therefore possessing no practical importance whatsoever, so far as concerns any threat to the professions or the structure of the society of the United States. So far as concerns the American professional men practicing in Japan, however, and especially their client, the American business, financial and military community, it is easy to foresee practical consequences of the most disastrous nature which would in all probability ensue upon a rejection by the Senate of the clause. Retaliation by Japan, in the form of barring, the American citizen here from practice of his profession, would be a sequel highly natural and, it cannot be denied, logical -- logical because the Japanese people, a proud and self-conscious people, could interpret only as a gratuitous insult to them the taking by the United States Senate of this action from which no practical benefit could in any point of view be expected to result to the United States. We need not repeat that the effect of such retaliation and the consequent deprivation of the American community of these services would be catastrophic to American interests in Japan. It might be pointed out also that the field would then be left open, and the opportunities of trade, commerce, and international intercourse generally would be abandoned, to such other nations as did not, by practicing discrimination against Japan, invite her retaliation -- for example, Great Britain has long admitted Japanese lawyers to her bar (though no instance is known of a Japanese lawyer's having undertaken to practice in England), and British lawyers could accordingly be expected to continue to be welcomed at the Japanese bar.

Aside from the direct effect on American enterprise, physically present in or dealing directly with Japan, of such a condition, it is easy to foresee other consequences which would even more fundamentally affect Japanese-American relations. The United States stands today as the leading champion in the world of international goodwill, mutual respect among peoples and nations, and freedom of opportunity for all. In Japan -- at least -- opinion is predominantly pro-American because of the belief that America means what she says concerning these matters. The rejection by the Senate of the United States of a treaty-provision on the only discoverable ground, that the United States is not willing to accord to Japanese citizens even on a basis of reciprocity that which Japan has voluntarily and unilaterally accorded to American citizens, and in circumstances in which that action secured to the United States no practical benefit and could seem only a gratuitous affront to Japanese pride, obviously can have no other effect on mutual relations but a bad one. It would be superfluous here to refer to 1924 and the enactment of the Oriental Exclusion Act; another such incident would be interpreted, as was that one, as an insult to a friendly nation and as an act of nationalism of the type of which the United States is the staunch opponent throughout the world. By this the friends of America in Japan and the advocates of an American orientation for Japan would be disarmed, and would be able only to stand mute before the charge that the United States' professions were insincere and to be abandoned whenever self-interest so dictated. The enemies of America in Japan, whether communist or ultra-nationalist, would at the same time be provided with a weapon of unquestionable power for the conduct of their campaign to instill into the Japanese people hatred, fear and distrust of America; and it is impossible to foresee what damage might not be done to American prestige in Japan and throughout the Orient generally. Indeed, though we have spoken of Japan, the same condition would no doubt result elsewhere throughout the world.

It is therefore the considered view of THE AMERICAN CHAMBER OF COMMERCE IN JAPAN that rejection by the Senate of the professions clause in the pending Treaty would be a mistake which would immediately affect gravely Japanese-American relations of commerce, industry, and friendship, and would threaten disaster eventually to the whole American national standing vis-a-vis not only Japan but all nations in which the struggle between freedom and slavery is being or is yet to be fought. We strongly urge the Committee to approve, and the Senate to ratify, the Treaty without any reservation which would eliminate or render nugatory the professions clause, as executed.

Very truly yours,

THE AMERICAN CHAMBER OF COMMERCE
IN JAPAN

/s/ Elmer E. Welty
President

53-120

DEPARTMENT OF STATE
REVIEWED BY ADell

DATE 9-30-83

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1. ARTICLE I EXEMPTIONS

(1) "Equitable treatment" clause is provided for in the FCN treaties between the United States and the various countries. How is this clause applied in the actual operation of the FCN treaties?

(2) Would there be any inconvenience or harm if the "equitable treatment" clause were put in the Preamble or in Article XXIV which provides for the purpose of the treaty or the interpretation of the application of the treaty?

2. ARTICLE II

(1) Is it proper to assume that the term "related commercial activities" includes all those activities permitted under Articles VII and VIII?

(2) Would there be any difficulty or inconvenience if a provision were added to accord MFN treatment with respect to entry, sojourn, etc. provided for in paragraphs 1(a) and 2 of Article II?

3. ARTICLE III

(1) The recently concluded FCN treaty between the U. S. and Uruguay provides for national treatment as the standard of treatment to be accorded with respect to protection and security of persons. Would there be any harm if national treatment were similarly provided for in the U. S. - Japan FCN treaty?

(2) It is believed that the provisions of (a), (b), (c) and (d) in the latter part of paragraph 2, Article III apply basically to restraints on the persons with respect to criminal proceedings.

If the first part of paragraph 2 were read to include administrative cases such as administrative or protective custody, it seems that the interpretation of (a), (b), (c) and (d) is being unreasonably stretched. (What is your opinion?)

4. ARTICLE IV

(1) Is it correct to interpret paragraph 1 of Article IV to cover obligation of employers to pay compensations under the Labor Laws without reference to negligence on the part of the employers?

(2) Is it correct to assume that disease, injury and death mentioned in paragraph 1 are those that are "due to work" as stipulated in the relevant Japanese laws?

(3) Is it correct to assume that the term "compulsory systems of social security" means a system of social insurance in which it is compulsory for the entrepreneurs (business owners) to participate?

(4) In case the obligation arising under the present Article involves payment of compensation for a long period of time, is the party concerned under obligation to remit the amounts due to the recipient even after the latter returns to his own country?

5. ARTICLE V

(1) Does the word "domestication" in paragraph 1, Article V mean only the act of organizing a corporation under the domestic laws, or does it also have some other meaning?

6. ARTICLE VI

(1) Why is it that no standard of treatment is provided for in paragraph I? There is no balance between paragraph 1 above and paragraph 1 of Article III which provides for a standard of treatment with respect to protection of persons.

(2) Does effectively "realizable" form in paragraph 3 mean instant cash payment?

(3) Does "full equivalent" in paragraph 3 mean current market price?

(4) What is the precise meaning of the word "adequate provisions" in paragraph 3?

(5) What is the significance of the second sentence in paragraph 5? Please explain the true and definite significance of the sentence by giving appropriate and plain illustrations.

Is the second sentence of the same paragraph intended to cover the cases where American nationals or companies hold stocks or other interests in the companies duly organized under the laws of Japan?

7. ARTICLE VII

(1) What is the standard of treatment that is required with respect to: (a) establishing and maintaining branches, etc.; (b) organizing companies, etc.; (c) controlling and managing enterprises in the second sentence of paragraph 1?

Is the required treatment same in the Colombia Treaty?

(2) Could banks engaged in essentially international operations carry on business involving depository and fiduciary functions besides engaging in buying and selling exchange?

(3) What is the relation between the case when "new limitations" are imposed under second sentence of paragraph 2 of Article VII and in case when property is taken for public purpose under paragraph 3 of Article VI or placed under public control or ownership under paragraph 5 thereof?

(4) Please give some examples of the "special formalities" mentioned in paragraph 3, and please explain their scope.

(5) What is the relation between Article VII and the right to impose restrictions on alien ownership of interests in enterprises carrying on particular types of activity mentioned in paragraph 4, Article IX?

(6) Is it understood that restrictions may be imposed on alien ownership of stocks in commercial banks?

(7) What is the extent to which a receiving country may refuse or permit foreign investments under the provisions of the Standard Draft?

(8) It was understood that a marine or shipping company of either Party may establish branches in the territories of the other under third sentence of paragraph 3, Article VII. Is the acquisition of rights to lease, occupy and use wharf, warehouse, etc. included in the permitted activities under Article VII?

(9) Does the national treatment apply with respect to land transportation under paragraphs 1 and 2 of Article VII?

(10) Could subsidies be given to its nationals and companies engaged in activities with respect to which national treatment is to be accorded, without giving such assistance to foreigners engaged in similar enterprises?

8. ARTICLE IX

(1) When differences exist between the U. S. and Japan as to legal interpretation of the movable and immovable properties, what would be the proper solution? Do the laws and regulations of respective country apply?

(2) Are shipbuilding docks and gridirons (stocks) movable or immovable properties in the U. S.?

9. ARTICLE X

(1) Does the word "trade name" include both trade names and names of products?

10. ARTICLE XI

(1) Please give concrete example of how income is allocated or apportioned to the different territories.

11. ARTICLE XII

(1) Is priority for withdrawal intended with respect to paragraph 3(a), 3(b) and 3(c)?

(2) Does the term "giving special consideration special needs," refer to the matters mentioned 3(c) or only to "capital transfer"?

12. ARTICLE XIII

(1) Do "commercial travellers" represent a group of entrants whose classification is based on the U. S. Immigration Law; or do the commercial travellers have definite qualifications recognized by international law and usage?

(2) If a national of a third country should represent the nationals or companies of either Party, what regulation would govern his entry into the territories of the other Party?

13. ARTICLE XIV

(1) It is believed that the matters mentioned in the second sentence of paragraph 1 are covered by the provision of paragraph 1, Article XII. Is such understanding correct?

14. ARTICLE XVII

(1) According to paragraph 4 of the Protocol, postal services are excepted from the application of paragraph 2(b) and (c) of Article XVII. Explanation has been given of the cases in which national treatment need not be accorded with respect to postal services. However, is there any concrete example of cases where postal services would be excepted from the application of MFN treatment (paragraph 2 states that fair and equitable treatment will be given, as compared with that accorded to nationals, etc. of any third country)?

15. ARTICLE XVIII

Goods or material imported under the Law concerning Special Account for Important Goods Import Fund may be sold to domestic manufacturers at a price lower than the market price. Is it understood that such a sale would not be infraction of the provision of paragraph 2, Article XVIII? (The current law permits

such a sale of synthetic rubber, metal nickel, cotton linter pulp, etc.)

16. ARTICLE XIX

(1) The MFN treatment provision is found in the first part of paragraph 3, Article XIX, while in the latter part of the paragraph, exclusive rights and privileges are reserved to its own vessels with respect to coasting trade, inland navigation and national fisheries. Does the MFN treatment principle apply to the reservation?

(2) Would the National and MFN treatment clause in paragraph 4 prohibit the reservation of shipment of a certain proportion of the articles of trade, under Trade and Payments Agreements with a third country, to the vessels of the parties concerned, or the insertion of a provision for the payments through Open Account thereunder?

17. PROTOCOL

(1) May it be understood that the term "legal aid" in paragraph 1 covers only those legal aids duly stipulated under laws or regulations and is not intended to include legal aid rendered by private organizations such as voluntarily organized bar associations, etc.

(2) The term "interests held directly or indirectly" is found in paragraph 2. What is meant by indirect interests? Could the following cases be considered as falling within the category of indirect interests?

- a. Wheat field belonging to (A) is taken for public purpose. The growing wheat belongs to (B) who has a tenant-right. What is the nature of (B)'s interest?
- b. A factory is taken for public purpose. As a result some laborers become unemployed. It seems that such laborers are entitled to retirement allowances. What is the nature of the laborers' interest? Do they hold an interest within the meaning of "direct and indirect interest"?
- c. An area is designated for air-to-sea bombing practices. As the result of the bombing practices, (X) fisherman who used to fish in the designated area is no longer able to fish there; the catch of (Y) fisherman engaged in fishing in the surrounding area outside the designated waters fall sharply.

(1) Does (X) have compensable interest? If so, is it direct or indirect?

(2) Does (Y) have compensable interest? If so, is it direct or indirect?

(3) Concerning "mining on public domain" mentioned in paragraph 3, MFN treatment is to be accorded with respect to mining on private land (paragraphs 2 and 4 of Article VII), while mining on public domain is dependent on reciprocity (paragraph 3, Protocol).

- a. Why was the above distinction made?
- b. Is mining on public domain dependent on simple
- c. (strict) reciprocity, or on reciprocal MFN principle?

In so far as the Protocol reads, "with reference to Article VII, paragraph 4," it seems that the latter interpretation is correct. However, if simple reciprocity is intended, then it is believed that paragraph 3 of the Protocol should read, "Notwithstanding Article VII, paragraph 4,".

1. In the older type FCN Treaties of the United States, which the scope of activities to which MFN treatment would be applicable was more or less same as that in the modern type FCN Treaties, the activities to which national treatment would be applicable were limited. However, in the modern type treaties, the trend seems to be to expand the scope of activities to which national treatment would be accorded.

Accordingly, with these two types co-existing, it is possible for a country which has an older type treaty with the United States to claim, under MFN clause, national treatment within the United States; whereas, the United States may not be able to claim similar treatment within the territory of such other party. In this connection, has the United States ever felt any inconveniences in the past? Has this point ever been raised in the Senate in connection with the debates on the modern type treaties? If so, what has been the views of the State Department and its explanation?

2. It is understood that the trade relations between the United States and United Kingdom are still regulated by the 1815 FCN Treaty between the two countries.

- (a) In this connection what inconveniences have been felt by the United States, if at all?
- (b) Is there any intention on the part of the United States to modify the current Treaty in line with the modern trend?

(c)

(c) Does the United States anticipate any objections on the part of the United Kingdom? If so, what may be some of the objections that might be posed by the United Kingdom?

3. Some newspapers have recently reported that there was a number of very difficult problems involved in the negotiation for an FCN Treaty going on between the United States and India. In as much as the negotiation is presently under way, it may be quite improper to pose any questions concerning the said negotiation; however, an explanation, so far as possible or permissible, on some of the problems would be highly appreciated.

Article XIX

(1) By the resolution of Congress shipment of products purchased with credit from the Export Import Bank will be reserved to the vessels of the United States. With respect to the export Cotton Credit to Japan, it is agreed that 50% of the cotton may be shipped on vessels other than those of the United States, and if more than 50% of the cotton is to be shipped by foreign vessels the Export Import Bank must issue a waiver with the approval of the Maritime Administration.

In case Japan should conclude a FCN Treaty with a third country with a provision similar to that of paragraph 4, Article XIX, would the above mentioned restriction conflict with the said provision of the treaty with the third country?

Article XXII

It seems that under the American legal system a legal entity may be constituted with the individual persons as the principal subject matter, while in the case of Zaiden Hojin (a legal entity) in Japan the principal subject matter is the property itself and not the individual persons.

It is understood that corporations are included in the companies according to paragraph 3 of Article XXII. Would the above Zaiden Hojin be included in the corporations?

Protocol

In Japan security for judgment is based upon the residence principle. Is the security for judgment in the United States based upon nationality principle or residence principle?

If the national treatment with respect to security for judgment is based upon nationality principle, would not the application of paragraph 1, Article V, in fact over-rule the domestic laws?

Article VII

(1) Article VII were to be drafted in line with Article VII of the Colombia Treaty, which of the activities among commercial, manufacturing and processing would cover the following?

- a. Real estate brokerage; stock brokerage;
- b. Warehousing;
- c. Motion picture production;
- d. Movie theatre management or film exhibition;
- e. Tourist industry and hold services;
- f. Broadcasting;
- g. Canning of fish products;
- h. Repairing, mixing and assembling;
- i. Lumbering;
- j. Freight forwarding; and
- k. Stevedoring.

Protocol. New paragraph on "Origin of Goods"

- a. Do the terms "geographic or commercial origin" and "country of origin" have the same meaning?
- b. If so, why is it that the different terms are used in the same sentence?

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Japan Commerce Treaty I

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Japan file

Clarence I. Egan

Eugene M. Brademan

U. S. - Japan FCH Treaty

March 7, 1951

You may be interested to know that according to a Japanese press report the Japanese Foreign Office has prepared a draft of a U. S. - Japan FCH Treaty containing the following provisions: Most-favored-nation treatment, protection of lives and property of Japanese nationals in the United States, establishment of Japanese consulates in the United States, and unrestricted entry of Japanese ships in U. S. ports.

copy to: Vernon G. Setser, State (Rm. 322, State Annex 7) ✓

EMBrademan/bb

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Japan file
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The Department believes it would be desirable to negotiate a treaty of Friendship, Commerce and Navigation with Japan immediately upon signature of the peace treaty. Since the implementation of a commercial treaty is dependent in peculiar degree upon the understanding and goodwill of customs officers, judges and other officials, its effectiveness would be seriously impaired if the impression became general that the treaty had been signed as a condition precedent to peace. Therefore, it is believed that it would not be desirable for formal negotiations to commence prior to that time although it is hoped considerable progress can be made informally in technical discussions. In any event, unless this work is expedited it will not be possible to begin formal negotiations by the time of signature.

In A-408 of March 22, 1951, the Department indicated that suggestions by the American Chamber of Commerce regarding provisions of a possible treaty of FCN would be welcomed. It would be helpful if the Department could have the suggestions of the American Chamber at an early date. It is understood that copies of the Uruguayan treaty have been given to the American Chamber as an indication of the type of treaty the U.S. is now generally negotiating. Although the Venezuelan treaty is not very different from the Uruguayan treaty it might be helpful if a copy of the latter also be given to the Chamber.

As soon as the comments of POLAD and the American business community in Tokyo have been received a draft will be prepared and sent to POLAD for transmission to the Japanese Government for its consideration. In the mean time

the meantime it would be appropriate for FOLAD to ascertain informally the views of interested Japanese officials regarding the desirability of negotiating a modern FCM treaty. You might indicate that the old treaty of 1911 is no longer fully adequate and you might stress the desirability of a modern treaty along the lines of those the U.S. has negotiated since 1946.

At an appropriate time the Departments of State and Commerce will inform interested American business groups, including the National Foreign Trade Council, that treaty negotiations are contemplated and their advice and suggestions will be requested. Everything feasible to insure that the views of American businessmen, both in the United States and in Japan, are obtained and considered will be done. However, it will not be practicable to discuss specific points at issue in the negotiations after they have been started. In other negotiations American businessmen have wished to see proposals and counterproposals and consult in the making of decisions with respect to specific points at issue. This is not practicable because (1) it is not feasible as a purely operating matter to consult on each point fully and, in effect, negotiate with American business groups and the foreign government simultaneously and (2) it is difficult for a government to compromise or recede from a position taken in negotiations if that position is known publicly. This latter, of course, is particularly true in the case of an Oriental country where "face" is important. This position was not understood by businessmen when the U.S. was negotiating its first postwar treaty (China). Since that time we have entered into negotiations and treaties with a number of countries and it is believed that as the business community is more aware of the problems involved it is now reasonably satisfied with the procedure generally used. Moreover, the substantive pattern has been established in the negotiation of these treaties and in general the principal issues have been resolved.

Any views or suggestions FOLAD may have will be appreciated.

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USPOLAD

Tokyo

A-616, June 29, 1951

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The Department believes it would be desirable to negotiate a treaty of Friendship, Commerce and Navigation with Japan immediately upon signature of the peace treaty. However, we should avoid having this appear as a condition precedent to peace in order to avoid an unfavorable reaction from the Japanese officials and general public. Therefore, it is believed that it would not be desirable for formal negotiations to commence prior to that time although it is hoped considerable progress can be made informally in technical discussions. In any event, unless this work is expedited it will not be possible to begin formal negotiations by the time of signature.

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As soon as the comments of POLAD have been received a draft will be prepared and sent to POLAD for transmission to the Japanese Government for its consideration. In the meantime it would be appropriate for POLAD to ascertain informally the views of interested Japanese officials regarding the desirability of negotiating a modern FCN treaty. You might indicate that the old treaty of 1911 is no longer fully adequate and you might stress the desirability of a modern treaty along the lines of those the U.S. has negotiated since 1946.

The advice and suggestions of the WFTC and possibly other representatives of American business will be requested. However, it will not be practicable to discuss specific points at issue in the negotiations after they have been started. In other negotiations, American businessmen have wished to see proposals and counterproposals and consult in the making of decisions with respect to specific points at issue. This is not practicable because (1) it is not feasible as a purely operating matter to consult on each point fully and, in effect, negotiate with American business groups and the foreign

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Any views or suggestions POLAD may have will be appreciated.

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770328 exp. 15935 Japan - Commerce Treaty
6 R
Paragraph in reply to Mr. Bailey

The primary project the Department visualizes immediately undertaking in furtherance of the opening clause of Article 12, Japanese Peace Treaty, regarding future agreements to place "trading, maritime and other commercial relations in a friendly and stable basis", is the negotiation of a treaty of friendship, commerce and navigation. Although preparation of the proposed bases for negotiation is not yet complete, the Department expects to seek agreement along the lines of the so-called "standard" draft which has been used in negotiations recently conducted with other countries (e. g., Israel).

It is expected that the proposals regarding shipping would be those contained in the standard navigation article, as approved on past occasions as a general policy by representatives of the Federation. So far as the Department presently knows, the principles of non-discrimination and fair treatment vouchsafed by the standard article would represent policies to which it would be desirable for Japan to commit herself in the treaty. The Department would expect to approach the treaty discussions with the aim, as contemplated by the Peace Treaty, of placing Japanese-American relations on a normal basis, and would accordingly deal with Japan as with a sovereign and friendly nation, desiring a treaty of reciprocal advantage and comprised of stipulations of rights and privileges framed in mutual terms. The Department would, of course, be most interested in having the benefit of any observations the Federation might care to offer in connection with the development of the projected treaty of friendship, commerce and navigation.

As to further intergovernmental agreements with Japan on what the Peace Treaty refers to as maritime relations (and aside from fisheries), the Department does not at the moment have in mind doing more than bringing Japan into the usual international accords, such as This would be in conformity with the understanding of the Department that the aim of Article 12 is to promote the normalization of Japan's external economic relations and the rebuilding of Japan's foreign economic policies in line with established international standards.

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Japan - Commerce Treaty I

MEMORANDUM

TO: CP - Herman Walker
FROM: BPT - Roger C. Dixon
SUBJECT: FCN Treaty with Japan.

(8) (R)
Rush 10/10/51

1. We have no objections to Articles XVIII or XXVI of the draft FCN Treaty with Japan.
2. Article XXVII could be clearer, shorter, and more comprehensive if rewritten as follows:

Neither High Contracting Party may prohibit the importation into its territory or seize, in accordance with the law of such High Contracting Party, any goods of the other High Contracting Party which bear, through labelling, marking, or otherwise, a false indication of geographic or commercial origin or which produce a false impression of their true origin. Each High Contracting Party agrees to take appropriate steps to prevent ~~and to provide injured parties with effective remedies against~~ unfair practices involving false indications, of whatever nature, that goods produced or sold in or exported from the territory of such High Contracting Party originate within the territory of the other High Contracting Party or any distinctive place within such territory or are the product of a national of such other High Contracting Party."

3. We suggest that in Article XXVIII everything be stricken beginning with the comma after "accorded", and that the Article be completed with "national treatment by the other High Contracting Party".

We see no reason to grant most-favored-nation treatment in addition to national treatment. To do so would prevent the United States from

denying

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY K. C. Ball DATE 8-30-51

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TS AUTH.

REASON(S)

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FCN Japan

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UNCLASSIFIED
(Security Classification)

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FOREIGN SERVICE DESPATCH

FROM: **OSPOLAD, TOKYO**

440

TO: **THE DEPARTMENT OF STATE, WASHINGTON.**

September 19, 1951

DATE

REF: **Miscos 246, August 16, 1951**

2 For Dept. Use Only CS	ACTION FX	DEPT. IN	REF	FOR	ALL	E	19A	6
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SUBJECT: **Negotiation of Treaty of Friendship, Commerce and Navigation with Japan;
Suggestions from American Chamber of Commerce in Japan**

The referenced despatch transmitted, as enclosure no. 1, a copy of the Mission's letter of July 10, 1951, inviting the American Chamber of Commerce in Japan to submit, for reference to the Department, suggestions for a treaty of friendship, commerce and navigation to be negotiated between the United States and Japan.

There is now enclosed a copy of a letter dated September 13, 1951, sent to the Mission by Mr. Robert G. STORRY, Executive Secretary of the Chamber, which contains pertinent suggestions officially approved by the Chamber's officers and board of governors. These suggestions, carefully prepared and considered reasonable, are based on the FCN Treaty between the United States and Ireland, that treaty having been selected from among the various postwar FCN treaties between the United States and foreign countries as being representative of the type of FCN treaty which the Chamber believes the United States might wish to negotiate with Japan.

The Mission's comments on the Chamber's suggestions follow:

Article I: The extension of language suggested by the Chamber, i.e., "between and within" countries, rather than "between" et cetera, is considered justifiable; and its clarification should be included.

Article IV: This article refers to the benefits on a national basis under social security. The Chamber justifiably points out that when an individual leaves Japan he should be allowed to convert into foreign currency the payments which may be returned to him; or that his heirs should be allowed to convert when they depart, et cetera. The Mission believes that the Chamber's suggestion on convertibility is good.

Article V: The Chamber suggests addition of MFN treatment to statement regarding equitable treatment to capital. The Mission believes this to be a good suggestion.

Article VI: The Chamber objects to exclusion of "practice of law" in the list 1 (a) of those pursuits which might be undertaken by foreign nationals. The Mission believes that the

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DEPARTMENT OF STATE A/CDC/MR

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that the suggested wording by the Chamber is good, since it permits an attitude on our part that our Federal Government has no jurisdiction in this regard which is a matter of application for admittance to the bar in each individual State.

Article VI, 1(b): The Chamber's suggested paragraph is broader than that contained in the FGN Treaty with Ireland. It is considered by the Mission to be worthy of consideration.

Article VI, 1c: The Chamber suggests deletion of this paragraph; this suggestion is considered justifiable since paragraph 1 in the FGN Treaty with Ireland is regarded as a reservation on the part of Ireland, which would presumably not arise on the part of Japan.

Article VII: The Mission believes that the Chamber's comments are sound. It will be noted that, with respect to real property and with California law in mind, the Chamber states that it does not wish to suggest a specific clause but hopes that the Department will draft a clause needed to give nations protection to property investment in light of national treatment; the latter, the Chamber realizes, cannot be promised by the United States.

Article IX: The Mission is inclined to concur with the Chamber's suggested deletion of this exception to the effect that United States nationals here or Japanese nationals in the United States will not have to be subject to taxes in connection with real estate more burdensome than that imposed on nationals of the respective country.

Article XVII: With respect to foreign exchange controls, et cetera, the Chamber suggests that this article be cross-referenced to Article IV with specific reference to convertibility on social security benefits when applicable. This appears to be a good suggestion.

Article XVIII: The Chamber recommends that this article, which refers to navigation, be expanded to include air navigation. This point appears to be worthy of consideration.

Article XI: The Chamber suggests deletion of paragraph 2, regarding the GATT and ITO, as not applicable. On

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this point, the Mission does not concur, since it is believed that a statement on the applicability of GATT principles, as well as one covering Japan's probable future membership in GATT, should be incorporated in this paragraph. It does concur, however, with the recommendation for deletion of paragraph 3b which contains a provision not applicable to Japan.

Article XXI: The Chamber suggests the word "vessels" be further defined to include airplanes, this being in line with its suggestion on Article XVIII. The Mission perceives no objection.

Article XIV: The Chamber's suggestion with respect to previous treaties, recorded agreements, et cetera, appears to require no comment.

The Chamber, in closing, calls attention to U.S. Immigration Act of 1924, which provided no immigration quota for Japanese and which assertedly "has been a serious stumbling-block to real friendship between the United States and Japan". As stated, the Chamber, at its annual meeting on September 11, passed a resolution urging Congressional action towards authorizing Japanese immigration into the United States, the Chamber's recommendation to that effect being forwarded to the appropriate Senate and House committees. The Department has already been informed of the action taken by the Chamber in this regard.

For the Political Adviser:

W. H. R. R. R.
W. H. R. R. R.
Economic Counselor

Enclosure:

Copy of letter dated September 13,
1951, from American Chamber of Commerce
in Japan.

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(COPY)

Enclosure 7000 445
September 19, 1951THE AMERICAN CHAMBER OF COMMERCE IN JAPAN
Tokyo

September 13, 1951

The Honorable W. J. Scheidt
U. S. Political Advisor to Japan
Mitsui Main Building
Tokyo, Japan

Dear Mr. Scheidt:

In accordance with the suggestion of the Economic Counselor in your office, The American Chamber of Commerce in Japan has reviewed several of the Treaties of Friendship, Commerce and Navigation which the United States has concluded with other Nations. The treaty with Ireland has been used as the working model for the Chamber's comments and recommendations on which consideration by your Government is requested for inclusion in a forthcoming similar treaty between Japan and the United States.

Our comments are set forth below:

ARTICLE I: 1(a) - It is recommended that the phrase "....between the territories of the two Parties" be modified to read "....between and within the territories of the two Parties", and that this Article be referenced to Article VI by changing "....in related commercial activities" to read "....in related commercial activities as more fully set forth in Article VI".

ARTICLE IV: 2 - We believe desirable the addition of a sub-paragraph (a) to provide that exchange be made freely available for conversion to the currency of the home country of foreign nationals permitted entry into Japan under Article I for such funds as have been accumulated under laws and regulations for various social security benefits at the time that the foreign national permanently departs from Japan.

ARTICLE V: We suggest that the first sentence be modified from "....accord equitable treatment to the capital of nationals" to read "....accord equitable and in no case less than most-favored-nation treatment to the capital of nationals".

ARTICLE VI: 1(a) - We suggest that "....except the practice of law" be amended to read "....except that the practice of law shall be subject to local regulations in the respective territories".

1 (b) - We suggest that "obtaining and maintaining patents of invention, and rights in trade marks, trade names, trade labels, and industrial property of all kinds" be changed to read "....obtaining and maintaining industrial property of all kinds including, but not limited to, patents of invention or

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2 Enclosed, TWD 443
September 17, 1951

design and rights in trade marks, trade names, trade labels, and copyrights.

4. -- We believe that this Article would serve no useful purpose in a similar treaty with Japan and that it should be eliminated.

ARTICLE VII: 1 - It appears that this Article is contradictory because it purports to accord national treatment with respect to certain kinds of property and at the same time states that people ineligible to continue the ownership of that property through alienage should be accorded certain disposition privileges. We believe that this apparent contradiction should be removed after which, although the Article is approved in principle, we judge from a review of portions of several treaties covering such property rights that national treatment would not be acceptable in the United States. Consequently, we suggest that the Article contain a clause worded to give national protection to American investment in lieu of national treatment.

ARTICLE IX: 1(b) - We suggest that the phrase "...except as to taxes in connection with the acquisition of real property, including estates and interests therein" be eliminated.

ARTICLE XVII: 3 - To this Article should be added as an appropriate cross reference for the suggested exchange allocation for social security benefits the phrase "and the special consideration with respect to the granting of exchange for social security benefits as provided in Article IV, 2".

ARTICLE XVIII: This Article dealing with commerce and navigation makes no mention of air travel, and we believe that it should be completely rewritten to include both land and air transportation.

ARTICLE XX: 2 and 3(b) - In the treaty with Japan, Article 2 in its entirety and sub-section (b) of Article 3 should both be eliminated.

ARTICLE XII: Following the suggestion for Article XVIII, we believe the definitions should be revised to include air ship as well as waterborne vessels.

ARTICLE XIX: For this Article the appropriate references for Japan would be substituted for those for Ireland. Similarly, in this and other Articles the name of the respective countries would of course be revised.

We shall appreciate your co-operation to have the suggestions as just outlined included in a forthcoming Treaty of Friendship, Commerce and Navigation between Japan and the United States.

In reviewing the commercial treaties between the United States and other countries, we notice that the titles all start with "Treaty of Friendship,....". In our opinion, the U.S. Immigration Act of 1924, which provided no immigration quota for the Japanese, has been a serious stumbling block to real friendship between the United States and Japan.

Accordingly, The American Chamber of Commerce in Japan took action at its

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3 Enclosures TOKYO 1149
September 19, 1951

annual meeting, Tuesday, September 11, urging early congressional action towards authorizing Japanese immigration into the United States. The Chamber recommendation to this effect is being forwarded to the appropriate Senate and House committees. We shall appreciate your co-operation through the Department of State in making this recommendation effective soon. Our Chamber believes that early passage of such legislation will be an important and practical demonstration of the friendship professed in the forthcoming commercial treaty with Japan.

Sincerely yours,

THE AMERICAN CHAMBER OF COMMERCE
IN JAPAN

/s/ Robert C. Story
/c/ Robert C. Story
Executive Secretary

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2 cc to Esp. J. / 10/1/51 *2 cc to R*

1 cc to Mr. [unclear] (by [unclear])

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY *K. J. W.* DATE *9-30-52* 9

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Officer in Charge of the American Mission,
Tokyo.

770328
box 15939
Jensen - Comm
Treaty I

The Secretary of State refers to the Mission's Despatch 246 of August 16, 1951, with enclosures, regarding the development of a negotiation between the United States and Japan for a new treaty of friendship, commerce and navigation. This Government shares the desire expressed by the Japanese, and as set forth in Article 12 of the Peace Treaty, to proceed expeditiously with discussions of such a treaty, with a view to arriving at a mutually agreed text which may be ready for signature as soon after the formal restoration of peace as may be feasible. It is gratifying that the Japanese Government has seen fit to pattern its own tentative treaty suggestions after the model afforded by treaties of the type which the United States has lately entered into with other countries. There is evidently a general community of outlook regarding the nature, scope and content of a treaty which would appear to augur well for the success of a negotiation.

Ordinarily, the Department prefers to use its own "standard" model as a basis for negotiating a treaty of friendship, commerce and navigation. Six mimeographed copies thereof are enclosed. Copies of this draft may be furnished to the Japanese for their study, and as the latest illustration of the Department's views and preferences as to the most suitable approach. However, although the Department would be happy if the Japanese Government should offer to substitute the Department's standard draft for its own initial proposals as a basis for discussion, the Department will refrain from urging this on its own initiative. The Department is willing, in deference to the Japanese initiative and as a token of good will

good will, to use the Japanese draft, with certain amendments, as the starting point for developing the negotiation.

In the main, the Japanese draft is in general outline sufficiently close to United States ideas to be an adequate basis for commencing the process of arriving at a mutually agreed final text. In some respects, however, the Japanese draft should be amended, if it is so to be used as the basis of discussion. Such amendments fall into three classes, as described below.

The first type of amendment is of a stylistic order, and is merely desirable rather than essential. This is, namely, to substitute the term "companies" for "corporations and associations" wherever used; the simple terms "national treatment" and "most-favored-nation treatment", respectively, with definitions thereof in the definitions Article, for the more lengthy references to these concepts throughout the treaty; and the term "products" for the expression "articles, the growth, produce or manufacture". These devices, used in all United States treaties signed subsequent to that with Italy, save a considerable amount of wordage and contribute to concise sentence structure.

The second group of amendments would be the addition, at appropriate points, of several provisions usually found in recent United States treaties which are missing from the Japanese draft. These include, notably, the following, the texts of which may be found in the enclosed standard draft at the points indicated in parentheses: provision on commercial arbitration (Article --, paragraph --); rule concerning the treatment of private enterprises which are under competition from state enterprises (Article --, paragraph --); paragraph on the employment of technical personnel (Article --, paragraph --); provision regarding the impairment of vested

vested rights and interests (Article —, paragraph —); and reservations with respect to flissionable materials and the GATT (Article —, paragraphs — and —).

The third group of amendments consists of several Articles from the Department's standard draft to be substituted in texto for certain Articles of the Japanese draft which diverge so widely from what the Department considers appropriate formulations as to be unsuitable basis for discussion. The substitutions accordingly proposed below are, of course, without prejudice to changes in other provisions in the Japanese version which the Department will wish to introduce during the course of the discussions. Further Japanese study of current United States treaty policy may, indeed, lead the Japanese on their own motion to introduce appropriate secondary revisions in some of their proposals in advance of the opening of detailed discussions.

Article I of the Japanese draft should be replaced by Article II, paragraphs 1 and 3, of the Department's standard draft. It is not possible for the Department to use a treaty of this kind as a vehicle for a wholesale setting aside of United States immigration policy. National treatment is, of course, out of the question; and, since immigrant quotas vary widely from country to country, it is not possible to assure even most-favored-nation treatment to any country as a general proposition. It is, however, possible to stipulate most-favored-nation treatment for one special category of entrants, namely, those entering for the purpose of engaging in international trade (i. e., "treaty traders" and who are covered in paragraph (a) of the Department's draft. (The formulation on this subject in the treaty with Ireland, for example, is in most-favored-nation terms). Also, the Department would wish to substitute paragraph 2 (d) and (e), of the same Article of its draft,

for Article

for Article IV, paragraph 3, of the Japanese draft, because the national treatment proviso of the latter gravely weakens a sound rule on free dom of communication and of reporting.

Article V should be replaced by Article — of the Department's standard draft. Interference by treaty with State prerogatives in the control of land policies has historically been a subject of great delicacy. On at least two occasions in the past the Senate has rejected treaties with Western European powers that provided national treatment as to land ownership; and it will be noted that none of the recent treaties signed by the United States (China, Italy, Uruguay, Ireland, Colombia, Greece, Israel, Ethiopia and Denmark) attempts to prescribe State policies with respect to ownership of real property. The mission will appreciate, of course, that deference to established policy on the subject would be especially called for in the case of an Asiatic country.

On the other hand, it has been acceptable to provide national treatment with respect to the leasing of real property necessary to the conduct of treaty activities, notwithstanding State laws circumscribing alien leaseholds. The right to lease is a valuable treaty right in the United States, as was plainly demonstrated in the case of the 1911 treaty of commerce and navigation with Japan. The Department, in proposing the formulation of the United States standard draft, is offering to assure leasehold rights.

With respect to ownership rights, the Department is proposing to deal in a special way: namely, through the "de facto reciprocity" formula first broached in the treaty of 1937 with Siam. This formula, devised in an effort to approach the national treatment ideal as nearly as practicable, provides in effect for reciprocal national treatment on ownership to the extent that the State laws permit; but it envisages that Japan would be free to withhold this standard of treatment from citizens and corporations of States

that do

that do not accord national treatment to Japanese nationals and corporations. A like formula in the 1946 Treaty with China is said to have influenced the States of Nevada and Utah toward ameliorating the anti-Chinese features of their real property laws; and it would be hoped that the adoption of the formula in treaties with Japan and other countries would assist the process, now variously evident in the United States, of a reconsideration of alien land disabilities still persisting in certain State laws. Expressly anti-Oriental laws have been declared unconstitutional in Arkansas, Oregon and in the lower courts of California; and have been liberalized by legislative action in Utah and Nevada. In half the States, aliens at present enjoy the same rights as citizens; and in only a comparatively few States are the general disabilities against aliens of serious proportions insofar as commercial land is concerned.

As to Articles III and VI, attention is invited to Articles -- and -- of the Department's standard draft, as an improved approach to the framing of sound rules on the business activities of persons and corporations. For other illustrations of treaty drafting deemed to be an improvement over the China and Italy treaties, see Articles -- and -- of the Colombia treaty, Articles -- and -- of the Denmark treaty.

Article IX. It is requested that the Japanese withdraw this Article altogether. It is no longer the policy of the United States to enter into treaty undertakings for exemptions from military service; and treaties most recently negotiated (Uruguay, Colombia, Greece, Israel, Ethiopia and Denmark) therefore contain no military service provisions. The present United States Selective Service law, as amended by Congress during the current session, stipulates that aliens

that aliens admitted for permanent residence in the United States shall be subject to induction and service in the armed forces in the same way as citizens.

Articles XI through XVII. Since the negotiation of the treaty with Italy, the Department has concluded that all essential provisions on navigation can be compressed into the confines of a single Article. (See Article -- of the Department's standard). The abbreviated formulation now favored by the Department has, aside from the virtue of compactness, the advantage of closing loopholes that might be present in its previous long formulation through appreciation of the inclusio unius exclusio alterius maxim. Substitution of the Department's standard navigation article is therefore requested. Alternatively, the Japanese are invited to restate their proposals in a single concise article. The following draft, prepared on a suggestive and non-committal basis by an officer of the Department's shipping advisory staff would be an illustration of the latter approach:

1. As used hereinafter:

- (a) "Vessels of a High Contracting Party" means all types of watercraft belonging to, or documented under the laws of, that High Contracting Party.
- (b) "Merchant vessels" means vessels engaged in commerce, whether owned publicly or privately.
- (c) "Fishing vessels" means vessels engaged in the taking of fish, shell fish and sea animals.

2. Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.

3. Merchant vessels of either High Contracting Party shall have liberty to come to and depart from all ports, places and waters of the other High Contracting Party open to foreign commerce and navigation and shall in all respects be accorded national treatment and most-

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favored-nation treatment therein.

4. Vessels of either High Contracting Party that are in distress at sea shall be permitted to take refuge in the nearest port or haven of the other High Contracting Party (regardless of whether it is open to foreign commerce and navigation) and shall therein receive friendly treatment and necessary assistance.
5. Vessels of either High Contracting Party stranded or shipwrecked on the coasts of the other High Contracting Party shall enjoy the same assistance and protection as are in like cases enjoyed by the vessels of such other High Contracting Party and shall not be subjected to any charges other than such as would be payable in like cases by the vessels of such other High Contracting Party.
6. Merchant vessels of either High Contracting Party shall be accorded national treatment and most-favored-nation treatment by the other High Contracting Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other High Contracting Party regardless of the origin or final destination of such articles. Such articles shall be accorded treatment no less favorable than that accorded like articles carried under like conditions in vessels of such other High Contracting Party with respect to:
 - (a) duties and customs of all kinds,
 - (b) the administration of the customs, and
 - (c) bounties, drawbacks and other privileges of this nature.
7. Each High Contracting Party may reserve exclusive privileges to its own vessels with respect to trade wholly between its own ports and to national fisheries.

It may

It may be noted that the material treated in Article XIV of the Japanese draft is omitted, as it is non-standard and its satisfactory formulation would require some exploration. (Note: the only provision in this connection to which the Department has thus far agreed in any recent commercial treaty negotiation is Article XIII, paragraph 5, of the Treaty with Greece).

Article XXII. Since the negotiation of the treaty with Greece Italy in 1948, on which the Japanese proposal is presumably based, the Department has restudied the whole question of exchange controls, with a view to the formulation of improved rules, especially as the interests of investors are affected. This reformulation, as reflected in Article -- of the Department's standard draft should be substituted for the Japanese proposal. It may be noted that the deficiencies of the exchange control article of the 1943 Italian Treaty have now been corrected in a Supplementary Agreement signed September 27 of this year (see Article III and IV of same).

Article XXIV. The Department's position on this Article, which creates difficulties for the United States, is reserved. Decisions regarding future United States policies on customs valuation are now before Congress, in connection with the pending Customs Simplification bill. What if any treaty proposals the Department will be in a position to entertain will not be evident until after Congressional intentions with respect to this bill become more definite.

Article XXVII. The Department proposes that this Article be deleted, and that in lieu thereof there be inserted in the Protocol a provision as follows:

"With reference to (Article XXI, paragraph 1 (7)), it is understood that either High Contracting Party may prohibit the importation into its territory or seize, in accordance

*(From a letter
promulgated by the
Customs Simplification
Bill, 1948)*

in accordance with the law of such High Contracting Party, any goods of the other High Contracting Party which bear, through labelling, marking, or otherwise, a false indication of geographic or commercial origin or which produce a false impression of their true origin. Each High Contracting Party agrees to take appropriate steps to prevent unfair practices involving false indications, of whatever nature, that goods produced or sold in or exported from the territory of such High Contracting Party originate within the territory of the other High Contracting Party or any distinctive place within such territory or are the product of a national of such other High Contracting Party."

The reason for suggesting a Protocol position is that clause (a) of the Japanese Article XXVII (the first sentence of Department's redraft) is already covered in the general language of paragraph 1 (7) of Article XXXI of the Japanese draft, and is a specific illustration of the deceptive and unfair practices alluded to therein. The technique suggested obviates possible duplication in the text of the treaty. Another reason for handling the written matter in the manner proposed is that the assertion of the right in question, although quite desirable for purposes of emphasis in a Treaty with Japan, is strictly speaking superfluous, inasmuch as each Party has this right whether or not the treaty so states.

The second sentence of the Department's counterdraft is a restatement of clause (b), and following, of the Japanese proposal, in what is deemed to be clearer and more meaningful language. It furthermore orients the provision away from the subject of abusive use of what is often known as "distinctive regional and geographical appellations of origin" - e. g., the label "Port" or "Champagne" on

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vinous beverages not produced in the official Port and Champagne regions of Portugal and France. It is not known that Japan has any name-products of this sort of which she is jealous; and the United States would not wish to undertake to make its own regulations more severe than at present, inasmuch as present regulations do in fact prevent the use of such names in a manner calculated actually to deceive the customer as to the true nature and origin of the product, and the United States has been unable to agree with the more extreme views in the matter nurtured by some foreign governments.

Article XXXII. The Department proposes that this Article should be replaced by Article -- of its standard draft which, it will be noted, contains a paragraph on consultation as well as one on the ultimate submission of unresolved disputes to the International Court at the Hague. The development of the standard submission clause, which has been included without significant alteration in each of the nine treaties of the present sort signed by the United States since World War II, is regarded by the Department as one of the outstanding achievements of its current treaty program; and its inclusion is the clearest kind of indication that the treaty establishes a rule of law.

The short-coming of the Japanese proposal is that it is ambiguous, verbose and inconclusive. The objective of a submission, or "compromissory", clause is to provide definitely for the settlement of a dispute. This the Department's formulation does, in the most straightforward manner, by simply saying that any dispute not otherwise settled may be taken to the Court. This ultimate step would be resorted to, in actual practice, only very rarely. The Department's formulation is framed with a view to achieving harmonization of differences of opinions about the treaty before

such

differences emerge into real disputes; is designed to give the greatest encouragement to resolving differences by ordinary diplomatic procedures; and allows every leeway to the two countries to refer any particular dispute to arbitration, or other forum, as they might mutually desire.

Concluding remarks. In the present instruction, the Department has confined itself to setting forth certain basic considerations that affect the formulation, in major outline, of what it would regard as an appropriate basis for treaty discussions. Comments on the details of, and proposals for secondary modifications in, the various provisions of the Japanese draft, are deferred until after a basic negotiating draft is definitely ready and the two Governments are thereupon in a position to commence detailed discussion.

The Department is mindful that the Japanese draft proposals forwarded under cover of the despatch in reference, and which constitute the object of the comments in the present instruction, are tentative and that the Japanese expect to give further study and consideration to perfecting their ideas of the kind of treaty they would like to negotiate. The Department hopes that with the information contained in the present instruction and its enclosures, the Japanese will be able within the reasonably near future to prepare, or assent to, a definitive negotiating draft which will be satisfactory to both Governments as the starting point of detailed discussions. It is understood that the acceptance, as basis for discussion, of the Department's standard draft, or of the Japanese draft amended in the manner suggested in the present instruction, will not prejudice the position of the Japanese or of the United States as to the final text of the treaty, nor will it prejudice the right of either

to seek

to seek such modifications and amendments as it may wish during the course of negotiation.

There are enclosed, in addition to six copies of the Department's standard draft, three copies each of treaties of friendship, commerce and navigation most recently signed by the United States, namely: Greece (August 3, 1951), Israel (August 23, 1951) and Denmark (October 1, 1951), plus the Supplementary Agreement with Italy (September 27, 1951). These treaties, like those with Colombia, Ireland, Uruguay and Italy previously signed and supplied to the Mission and the Japanese, were all developed from the Department's standard proposals of the day. While reflecting many variations and adaptations to the special views and circumstances of the different countries, they all embody the same common denominator of treaty principle and coverage. Copies of all of this material should be furnished to the Japanese, along with comments on their draft along the lines set forth in the present instruction.

The Department will await with interest the Mission's report on further developments.

EDT:GP:HWalker:jn
10-12-51

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CP - Herman Walker

October 16, 1951

BPT- Roger C. Dixon

Provision on Technical Cooperation for FCN Treaties.

It is suggested that the following clause be advocated by the United States for inclusion in the Japanese and all future FCN treaties with industrially significant countries.

"Each Party agrees to encourage cooperation between the Governments and nationals of the two Parties in exchanging and furthering the use of scientific and technical knowledge, particularly in the interests of increasing productivity and improving standards of living.

"Each Party agrees to make generally available without restriction to nationals of the other Party any patents that the Government of such Party may acquire in the territory of such other Party. Any royalties charged shall be reasonable."

The first paragraph is a simple statement of United States policy with respect to scientific and technical knowledge. It requires no specific implementation other than the forms of cooperation normally extended by the United States to all free countries.

The second paragraph presents in shortest possible form the policy advocated by the United States with respect to Government-owned patents in foreign jurisdictions.

This policy may be summarized as follows:

1. Patents are granted to inventors principally as an incentive for invention and a reward for the disclosure of inventions to the public.
2. Incentive and reward are not necessary to governments, because they conduct research for the public benefit, which can be best achieved through making resulting inventions generally available to the public.
3. It is politically and economically objectionable for one government to license exclusively or to sell a patent monopoly which it receives by the grant of another government.
4. It is desirable, in the interest of international cooperation, for governments to make government inventions generally

available

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY *[Signature]* DATE 7-30-80

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available to each other and to each other's nationals either by non-exclusive, non-restrictive licensing of patents or by dedication through publication of the inventions.

5. Preferably government-owned patents should be made available royalty-free, but the United States would not oppose the charge of reasonable royalties.

It will be noted that the suggested sentence on this subject does not go into detail on mechanics of making patents and inventions available. Further agreement outside the context of the FCN treaty would, therefore, be desirable with any country conducting significant government research in order to facilitate dissemination of information on government inventions and technology and to determine whether, and under what circumstances, royalties would be charged.

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FROM: Tokyo

TO: Secretary of State

NO: 764, Oct 16, noon.

Control: 7613

Rec'd: October 16, 1951

4:36 a.m.

TOPAD

Wld appreciate info re steps and approx timing Dept intends for negot FCN treaty with Japan with indication of what we may tell FONOFF informally.

SMD:JM

SEBALD

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY K Odeh DATE 9-30-82

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OCT 17 5 32 PM '51

USPOLAD

SENT TO: ~~XXXXXXXXXX~~ TOKYO TOPAD 624

Origin

Info

DEPT expects forward detailed INSTR RE FCN treaty ^{at early date} ~~this week~~
 (UR 764, OCT 16). DEPT prepared enter treaty discussions whenever
 FONOFF ready, with view to signature as soon ~~after~~ ^{as possible} ~~as possible~~
~~as possible~~ as possible.

DEPARTMENT OF STATE A/CDC/MR
 REVIEWED BY A. Oskell DATE 9-30-82
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IS AUTH. REASONS The Legal Adviser

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RELEASE DATED ☐ October 18, 1951

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7D 328
box 15939
Japan Comm. Treat. I

13

R

TO: CP - Mr. Walker

FROM: L/E - Mr. Metzger

SUBJECT: Attached paper recommending a Technical Cooperation
Article for FCN Treaties

I see no objection from any point of view to the inclusion of the first paragraph of the suggested article in our standard FCN Treaty draft. However, I believe that the second paragraph would lead to great difficulty in negotiations; it is a specialized subject, best dealt with separately; it should not be included in our treaty draft.

The second paragraph of the suggested article draws a clear distinction between patents owned by governments and patents owned by private persons or corporations. Only government-owned patents (and it is not clear whether government-owned corporations are "government") are to be licensed without restriction. Since many countries, both highly developed and underdeveloped, would not agree to a difference in treatment on the basis of private or public ownership, in view of national choices which they have made, it would be extremely difficult to negotiate such agreements with such countries.

The sort of international agreement represented by the second paragraph of this clause has been talked about for several years, with the British and others, and has thus far not been brought to fruition. Being a complicated and difficult subject, for the reasons mentioned above as well as others, it should be handled on its own merits separately as part of the patent problem, which has traditionally been handled through separate conventions and agreements. Its addition to a FCN draft may perhaps be thought to be a device for securing the agreement which might not be reached were it considered on its own; but by the same token, it would create great difficulties in the negotiation of FCN treaties.

Apart from the difficulty of negotiation, it is difficult on principle to see why the licensing of patents should be made dependent upon who happens to own them; the relevance of such a criterion to "economic development" and the "improvement of standards of living" is not perceived.

L.E./K:SMetzger:blm

Translation from TOKYO SHIMBUN

Eve October 21, 1951.

Unofficial Negotiations on U.S.-Japan Treaty of Commerce and Navigation Begin. In Principle, no Restrictions set out on Foreign Exchange. Catches of Fish are Excluded from Most-Favored-Nation Treatment.

Extract

Washington, 20th.

Article Concerning Immigration is Omitted

It appears that no article concerning immigration is provided for under the present draft treaty (of Navigation and Commerce), and it is feared that the problem may be taken up in the Senate when ratification of this treaty of commerce and navigation is made, whereas it is a very delicate issue. To put it more precisely, the law of immigration and that of naturalization are both American domestic laws, and at present, no right of naturalization is recognized for Japanese. While the Chinese, Indians, and other peoples are enjoying the right of naturalization, only the Japanese and Koreans are being treated discriminately in this respect. As is widely known, foreigners having no right of naturalization are not authorized to enter under the immigration quota.

Therefore, the Japanese firms in the U.S., collecting fairly large amounts of money, have continued to make an appeal to American Congress every year in this regard. Yet the bill has not yet been approved although it has appeared to pass every year. Inasmuch as it is difficult to settle the problem after the draft treaty of commerce and navigation has been prepared, the Japanese Government should express its desires that the present discriminatory treatment, which runs counter to the principles of the U.S., be revised as early as possible. Although the problem is evidently far from being settled only by the will of the U.S. Government, nevertheless it may be settled much earlier as a great majority of Congressmen have full understanding on the issue, provided that the assertion of the Japanese Government, the Japanese national sentiment and public opinion appearing in the Diet and newspapers are reported continuously to the American Congress in a clear-cut shape.

DEPARTMENT OF STATE A/CDC/MR

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5-10-50

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FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

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TO : Department of State

FOR : (agency or individual) NA

FROM: USPOLAD, Tokyo

DATE: October 29, 1951.

ITEM(S) TRANSMITTED

Extract from Translation from TOKYO
SHIMBUN of Eve October 21, 1951.

REMARKS OR REFERENCE TO PREVIOUS CORRESPONDENCE

Ref: Mission's desp. 165, July 30, 1951
Remarks: Early example of Japanese
protest against discrimination in
U.S. immigration laws predicted in
reference despatch.

INITIALS OR NAME AND TITLE OF PREPARING OFFICER

WNStokes/bjb *com*

16-01771-1 GPO

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FROM: Tokyo

TO: Secretary of State

NO: 896, October 30, 6 p.m.

TOPAD.

In answer to query FONOFF notified informally and confidentially of gist LEPTTEL 621, October 17, and cautioned publicity inadvisable this stage. FONOFF indicated willing begin negots. MAINICHI October 29 published front-page lead art stating negots begin next month and identifying subj matter various arts presumably JG draft. FONOFF embarrassed over apparent leak. TOKYO SHIMBUN October 21 published similar art from correspondent Sakai in Washington. In view above, suggest advisability of agreed official announcement by JG re status proposed negots. In this connection, instrs mentioned REFTTEL wld be helpful.

SEBALD

GWP:GMC

DEPARTMENT OF STATE A/C C/MR	
REVIEWED BY <u>KDell</u>	DATE <u>9-30-82</u>
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USPOLAD

TOKYO TOBAG

A-280 Oct 31, 1951

SUBJECT: Suggestions from American Chamber of Commerce in Japan
RE projected FCN treaty. Mission's despatch 440, SEPT 19.

Several of the suggestions offered by the Chamber are met, the Department believes, in the proposals made in the Department's instruction in reply to Mission's despatch 246, AUG 16, now in course of being forwarded to the Mission. These are the suggestions relative to Articles VI (4), VII, IX (1b), XX (3b) and XXIV of the Irish Treaty. The suggestion relative to Article V is met, in effect, by the reformulations contained in the "standard" draft forwarded under cover of the aforesaid instruction. For the most part, however, the Department proposes national treatment as the primary rule, as being generally stronger than either "equitable" or "most-favored-nation".

As to the point made relative to Articles XVIII and XXI, the subject of air transport is not, as a matter of policy, dealt with in a treaty of this kind but, rather, by special air conventions and agreements. This is for the reason that the matter, being highly specialized and technical, is not adapted to the type of rule-making which characterizes an FCN Treaty. Thus Article 13 of the Peace Treaty deals specially with aviation, although Article 12 covers commerce and navigation generally.

As to the suggestion relative to Article VI (1b), the Department no longer seeks to deal with copyright in this type of treaty, the treaty of 1946 with China being the last to contain a copyright provision. (As may be perceived by reference to the ratified text of the China Treaty, the copyright provision in it occasioned a Senate reservation). A simple and feasible executive procedure exists for regulating international copyright; and it has been found that this procedure affords the most practicable approach to the subject. The Department expects to communicate shortly with the Mission concerning plans for making a satisfactory copyright arrangement with Japan.

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REVIEWED BY *W. O. Bell*

DATE 9-30

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As to Article VI (1a), the Department's standard formula on the practice of professions does not suggest an exception for law. The Japanese draft forwarded with Mission's despatch 246, on the other hand, apparently contains no specific proposal with regard to professions. If it transpires that the text emerging from the forthcoming negotiation includes material on the professions, and it becomes necessary or desirable to enter an exception for the law, the Department will bear the wording suggested by the Chamber in mind.

As to the suggestion relative to Articles IV (2) and XVII (3), it would appear, on first impression, that the question of convertibility would be secondary to the question of whether a departing foreigner would be entitled to a lump-sum reimbursement of amounts which he had contributed to the local social security fund; and the Department seriously doubts whether it would be practicable to endeavor, in a treaty of this kind, to require such refunds. Existing US social security law does not provide for refunds; and the Department would not wish to ask that Americans be given by treaty a privilege in Japan that Japanese would not have in the US. It may be observed that it is not yet certain that the final treaty will, in deed, contain a social security provision at all. The Japanese draft omits this subject.

A reservation for the GATT (comment RE Article XX, paragraph 3 (b)), is standard, as it is necessary from the viewpoint of the US. It has therefore, been included in treaties even with countries which were not in the GATT (e. g., Colombia, Israel and Ireland). If, as may be, there prove to be special problems for Japan in connection with the GATT, these can be considered during negotiations.

The suggestion regarding Article I (a) would lead to a conflict with US immigration laws. While it is permissible for the treaty to provide rights as to entry and indefinite stay under a "sec. 3 (6)" or "treaty trader" visa, this right of indefinite stay may not be lawfully extended to persons entering for purposes other than the carrying on of international trade between the two countries (and of such incidental activities as may be necessary and proper to the effectuation of this major purpose). The Department has, however

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however, been cognizant of the advantage to American businessmen of expanding the treaty trader privilege in the direction recommended by the Chamber, and has offered suggestions for statutory authorization in that connection to the subcommittee of the Senate Judiciary Committee which has been engaged in the task of preparing a comprehensive revision and recodification of the immigration code. The subcommittee, after consideration of the Department's suggestions, has included in its recommendations a proposal to establish an additional class of entrants entitled to treaty visas, to wit: a person entitled, pursuant to treaty, to enter "solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital". This clause is carried as sec. 101 (a) (14) (E) (ii) of S. 2055, introduced on August 27, 1951, by Senator McCarran; as well as in sec. 101 (a) (15) (E) (ii) of H. R. 5678, introduced on October 9 by Representative Walter, Chairman of a subcommittee of the House Judiciary Committee, engaged in the same task. A representative of the National Foreign Trade Council has testified in support of this clause.

In connection with the Chamber's general comment concerning immigration, it may be of interest that both these bills, as presently worded, propose to remove the racial bar to immigration and naturalization, and to authorize an immigrant quota for Japanese.

The Department appreciates the attention the Chamber gave to the projected treaty, and would be glad to consider any additional views the Chamber might on further study wish to express. However, the Chamber should not be invited to inspect or comment on the treaty draft which was prepared by the Japanese.

EDT:CP:HWalker:jn
October 23, 1951

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PER *HANLEY* OFFICE *LOC*

FADRC FOI CASE NO. *7902989*

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No. *63*

To the

United States Political Adviser for Japan,

Tokyo.

The Secretary of State refers to the Mission's Despatch 246 of August 16, 1951, with enclosures, regarding the development of a negotiation between the United States and Japan for a new treaty of friendship, commerce and navigation. This Government shares the desire expressed by the Japanese, and as set forth in Article 12 of the Peace Treaty, to proceed expeditiously with discussions of such a treaty, with a view to arriving at a mutually agreed text which may be ready for signature as soon after the formal restoration of peace as may be possible. The fact that the Japanese Government has seen fit to pattern its tentative treaty draft upon the model afforded by treaties of the type which the United States has lately entered into with other countries suggests that there is general agreement on the nature, scope and content of a treaty of sufficient extent to augur well for the success of a negotiation.

Ordinarily, the Department prefers to use, and has used in all negotiations to date (except in the special case of Ethiopia), its own "standard" model as a basis for negotiating a treaty of friendship, commerce and navigation. This draft has the advantage, inter alia, of being a document which the Senate has previously approved and with which it is now familiar. Six mimeographed copies thereof are enclosed. Copies of this draft should be furnished to the Japanese for their study, and as the latest illustration of the Department's views and preferences as to the most suitable approach. However, although the Department would be happy if the Japanese Government should be willing to substitute the Department's standard draft for its own initial proposals as a basis for discussion, the Department will refrain from insisting that this be done. If the Japanese strongly desire, the Department is willing, in deference to the Japanese initiative and as a token of good will, to use the Japanese draft, with certain amendments, as the starting point for developing the negotiation. These amendments are set forth in the Annex hereto.

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In the present instruction and its Annex, the Department has confined itself to setting forth certain basic considerations that affect the formulation, in major outline, of what it would regard as an appropriate basis for treaty discussions. Comments on the details of, and proposals for secondary modifications in, the various provisions of the Japanese draft, are deferred until after a basic negotiating draft is definitely ready and the two Governments are thereupon in a position to commence detailed discussion. (As to the Japanese indication of desire to negotiate also with respect to tariff concessions, consular rights, shipwrecks and double taxation, the Japanese correctly appreciate that these matters are properly treated separately from our FCN Treaty.)

The Department is mindful that the Japanese draft proposals forwarded under cover of the despatch in reference, and which constitute the object of the comments in the present instruction, are tentative and that the Japanese expect to give further study and consideration to perfecting their ideas of the kind of treaty they would like to negotiate. The Department hopes that with the information contained in the present instruction and its enclosures, the Japanese will be able, within the reasonably near future to prepare, or assent to, a definitive negotiating draft which will be satisfactory to both Governments as the starting point of detailed discussions. It is understood that the acceptance, as basis for discussion, of the Department's standard draft, or of the Japanese draft amended in the manner suggested in the Annex to the present instruction, will not prejudice the position of the Japanese or of the United States as to the final text of the treaty, nor will it prejudice the right of either to seek such modifications and amendments as it may wish during the course of negotiation.

There are enclosed, in addition to six copies of the Department's standard draft, three copies each of treaties of friendship, commerce and navigation most recently signed by the United States, namely: Greece (August 3, 1951), Israel (August 23, 1951) and Denmark (October 1, 1951), plus the Supplementary Agreement with Italy (September 27, 1951). These treaties, like those with Colombia, Ireland, Uruguay and Italy previously signed and supplied to the Mission and interested Japanese officials, were all developed from the Department's standard proposals of the day. While reflecting many variations and adaptations to the views and special circumstances of the different countries, they all embody the same common denominator of treaty principle and coverage. Copies of all of this material should be furnished to the appropriate Japanese officials, along with comments on their draft along the lines set forth in the Annex to the present instruction.

The Department will await with interest the Mission's report on the reactions of the Japanese Government to the views set forth herein. If the Japanese Government is prepared to accept as a basic negotiating draft the Department's standard draft, or, alternatively, its own draft with revisions corresponding generally to those suggested by the Department, the Department is prepared, as stated in the Department's telegram No. 621 of Oct. 17, 1951, to undertake negotiations at an early date with a view to agreement on a final document. The Department is further prepared to give full consideration

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consideration to the preference of the Japanese Government for either Tokyo or Washington as the site of negotiations.

The Department's comments on the views of the American Chamber of Commerce on a treaty of friendship, commerce and navigation between the United States and Japan (the Mission's despatch No. 440 of September 19) will be submitted shortly.

Enclosures:

1. Six copies of FCN Treaty (in blank).
2. Three copies of FCN Treaty with Greece.
3. Three copies of FCN Treaty with Israel.
4. Three copies of FCN Treaty with Denmark.
5. Three copies of Supplementary Agreement with Italy.

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SD/CP:HWalker:jn
October 22, 1951

L/E
Cld. Mr
Mazgur
KW-9/23

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SEN

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Cleared in draft;
OFD - Mr. Young 10/15/51
Commerce - Miss Espenshade 10/17/51
NA - Mrs. Kallis 10/19/51

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